

Exhibit W - Deposition of Rule 30(b)(6) witness Justin Roth (LVMPD's CIRT Report)

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

Page 260

1

CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
 3 COUNTY OF CLARK)
) SS

4 I, Holly Larsen, a duly certified court
 reporter licensed in and for the State of Nevada, do
 5 hereby certify:

6 That I reported the taking of the deposition of
 the witness, Detective Justin Roth, at the time and
 7 place aforesaid;

8 That prior to being examined, the witness was
 by me duly sworn to testify to the truth, the whole
 9 truth, and nothing but the truth;

10 That I thereafter transcribed my shorthand
 notes into typewriting and that the typewritten
 11 transcript of said deposition is a complete, true,
 and accurate record of testimony provided by the
 12 witness at said time to the best of my ability.

13 I further certify (1) that I am not a relative
 or employee of counsel of any of the parties; nor a
 14 relative or employee of the parties involved in said
 action; nor a person financially interested in the
 15 action; nor do I have any other relationship with
 any of the parties or with counsel of any of the
 16 parties involved in the action that may reasonably
 cause my impartiality to be questioned; and (2) that
 17 transcript review pursuant to FRCP 30(e) was
 requested.

18 IN WITNESS HEREOF, I have hereunto set my hand
 19 in the County of Clark, State of Nevada, this 20th
 day of January, 2025.

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HOLLY LARSEN, CCR NO. 680

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3

4 LATIA ALEXANDER,)
5 individually as heir of)
6 ISAIAH T. WILLIAMS and in)
7 her capacity as Special)
8 Administrator of the Estate)
9 of ISAIAH T. WILLIAMS,)
10)
11 Plaintiff,)
12)
13 vs.)
14)
15 LAS VEGAS METROPOLITAN)
16 POLICE DEPARTMENT, a)
17 political subdivision of the)
18 State of Nevada, et al.,)
19)
20 Defendants.)
21)
22)
23)
24)
25)

) Case No.
) 2:24-cv-00074-APG-NJK

14

15 VIDEOTAPED DEPOSITION OF DETECTIVE JUSTIN ROTH

16 Taken on Wednesday, January 8, 2025

17 By a Certified Stenographer and Legal Videographer

18 At 9:12 a.m.

19 At 400 South Seventh Street

20 Las Vegas, Nevada

21

22

23 Stenographically reported by:

24 Holly Larsen, NV CCR 680, CA CSR 12170

25 Job No. 59091 - Firm No. 116F

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

1	APPEARANCES:	2	PROCEEDINGS
2	For the Plaintiff:	3	-oOo-
3	MURPHY'S LAW, PC	4	THE VIDEOGRAPHER: Today is
4	BY: CORRINE MURPHY, ESQ.	5	January 8, 2025. The time is approximately
5	2620 Regatta Drive	6	9:12 a.m. Your court reporter is Holly Larsen, and
6	Suite 102	7	I am your videographer, Nekita Taylor. We are here
7	Las Vegas, Nevada 89128	8	on behalf of Lexitas.
8	702.820.5763	9	The witness today is Detective Justin
9	For the Defendants:	10	Roth, and we are here in the case Latia Alexander,
10	MARQUIS AURBACH	11	et al., versus Las Vegas Metropolitan Police
11	BY: CRAIG ANDERSON, ESQ.	12	Department, et al.
12	10001 Park Run Drive	13	Will counsel please state your
13	Las Vegas, Nevada 89145	14	appearances, and the court reporter will administer
14	702.382.0711	15	the oath.
15	The Legal Videographer:	16	MS. MURPHY: Good morning. Corrine
16	NEKITA TAYLOR	17	Murphy, Bar Number 10410, on behalf of plaintiff.
17		18	MR. ANDERSON: Craig Anderson on behalf
18		19	of the defendants.
19		20	Whereupon,
20		21	DETECTIVE JUSTIN ROTH,
21		22	having been first duly sworn to testify to the
22		23	truth, was examined, and testified as follows:
23		24	
24		25	MS. MURPHY: Let the record reflect this
25			
1		3	
2	WITNESS	PAGE	1 is the time and the place of the deposition of
3	DETECTIVE JUSTIN ROTH	5	2 Justin Roth in the matter of Latia Alexander,
4	Examination by Ms. Murphy	5	3 et al., versus Las Vegas Metropolitan Police
5		4	4 Department, et al., Case Number 2:24-cv-00074.
6		5	
7		6	EXAMINATION
8		7	BY MS. MURPHY:
9	NUMBER	8	Q. Mr. Roth, my name is Corrine Murphy, and
10	Exhibit 1	6	9 I'm an attorney. I represent the plaintiff, Latia
11	Notice of Videotaped	10	Alexander, in this case.
12	Deposition of Detective	11	Can you please state and spell your full
13	Justin Roth	12	name for the record.
14	Exhibit 2	13	A. It's Justin Roth. J-u-s-t-i-n R-o-t-h.
15	Critical Incident Review	14	Q. Do you have a middle name, Mr. Roth?
16	Team Administrative Report	15	A. It's Ray, R-a-y.
17	Exhibit 3	16	Q. And would you prefer that I call you
18	Pages 187 and 188 of	17	18 Mr. Roth or Justin?
19	Critical Incident Review	18	A. Justin is fine.
20	Team Administrative Report	19	Q. And, Justin, you've been noticed to be
21	Exhibit 4	20	here today; correct?
22	NRS 179.055	21	A. Yes.
23	Overall layout of Apartment	22	MS. MURPHY: I'm going to attach the
24	1125	23	Notice of Videotaped Deposition of Justin Roth as
25	Exhibit 6	24	Exhibit 1 to today's deposition.
26	Tactical Review Board CIRT	25	///
27	Conclusions		
28	Exhibit 7		
29	LVMPD Interoffice Memorandum		
30			

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 BY MS. MURPHY:</p> <p>2 Q. And, Justin, you'll be able to look 3 at this too. Whenever I'm going to ask you to 4 look at a document today, I'm going to first 5 ask -- hand it to the court reporter, she's going 6 to mark the exhibit number on it, and then at the 7 end of the deposition, when she compiles a 8 transcript of today's hearing, she'll attach all 9 those documents. So make sure and don't leave with 10 any documents today.</p> <p>11 A. Okay.</p> <p>12 Q. Give them all back to her at the end of 13 the day.</p> <p>14 A. Came with nothing; I will leave with 15 nothing.</p> <p>16 Q. Okay. Thank you.</p> <p>17 (Exhibit 1 marked.)</p> <p>18 BY MS. MURPHY:</p> <p>19 Q. And, Justin, you understand that you're 20 here today to discuss the shooting of Isaiah 21 Williams?</p> <p>22 A. I do.</p> <p>23 Q. Have you ever given your deposition 24 before?</p> <p>25 A. No.</p>	<p>6</p> <p>1 Q. Have you ever given testimony, either 2 in a deposition or at court, in your capacity as a 3 CIRT -- and that's C-I-R-T -- investigator?</p> <p>4 A. I have not.</p> <p>5 Q. Okay. Is there any reason that you 6 would not be able to answer and understand my 7 questions today and give your best and most accurate 8 testimony?</p> <p>9 A. No.</p> <p>10 Q. Are you under any medications that would 11 inhibit your ability to give reliable testimony 12 today?</p> <p>13 A. No.</p> <p>14 Q. Have you had any recent personal or 15 professional issues pop up that would inhibit your 16 ability to give reliable testimony today?</p> <p>17 A. No.</p> <p>18 Q. Can you please tell me everything that 19 you did to prepare for today's deposition?</p> <p>20 A. I went over my report that was authored 21 and my conclusions that were written through the 22 section.</p> <p>23 Q. And when you say your report, I have a 24 220-page report. Is that the report you're 25 referring to?</p>	<p>8</p>
<p>1 Q. Have you ever testified in court before?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. In what court cases have you 4 testified?</p> <p>5 A. I could not tell you off the top of my 6 head. I've been on the department for 16 years, so 7 a few. But nothing off the top of my head.</p> <p>8 Q. And so "a few" could mean a few 9 different things to a few different people.</p> <p>10 Does "a few" mean -- would you say that 11 it's been more than five or less than five?</p> <p>12 A. If we're talking about full testimony 13 inside of a jury court or versus a preliminary 14 hearing testifying -- which one are we talking about 15 here?</p> <p>16 Q. Let's talk with a trial, with a jury 17 trial.</p> <p>18 A. One or two, to my recollection.</p> <p>19 Q. And in the prelims, I'm assuming that 20 you were there as an arresting officer, an 21 investigating officer. Is that fair?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. Okay. And how many of those do you 24 think you've testified?</p> <p>25 A. Dozens.</p>	<p>7</p> <p>1 A. Correct.</p> <p>2 Q. And you read the whole thing again from 3 start to finish?</p> <p>4 A. I did not from start to finish. I have 5 a very good recollection of that report given that 6 the investigation took approximately a year to 7 complete on our side, an administrative 8 investigation.</p> <p>9 I read over the conclusions again, 10 which, again, are the, I guess, summary of the body 11 of the report, and a few notes I took in my head 12 reference the body of the report.</p> <p>13 Q. Okay. So is it fair -- so you said a 14 few notes that you took in your head.</p> <p>15 Did you -- did you do any actual 16 handwritten notes as you reviewed?</p> <p>17 A. No.</p> <p>18 Q. And just one thing, Justin. The court 19 reporter is taking down everything we say. I know 20 that you're anticipating the end of my question, but 21 just let me finish it so that she can write it down.</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. She has a tough time writing down what 24 two people say at the same time.</p> <p>25 A. Understandable.</p>	<p>9</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

	10		12
1 Q. And I'll try to do the same for you.		1 and you tell me if I'm right or wrong. And, I mean,	
2 A. Okay.		2 this is a very in-depth report. So I'm assuming you	
3 Q. If I start into a question and you have		3 had, like, notes and that kind of stuff that you had	
4 not finished answering it, please let me know.		4 compiled in order to create this final report.	
5 Because sometimes I can go kind of quickly too. I		5 Did you review any of those, or do you	
6 don't want to cut you off; I want to give you every		6 even have access to them anymore?	
7 opportunity to give your full testimony today.		7 A. We do have access to our H drive. It's	
8 Okay?		8 essentially a virtual folder that we did hand over	
9 A. Would you like me to put up my hand		9 to our legal once it was completed, which also	
10 or -- and somehow indicate it or just speak up?		10 entails something called IA Pro, which is kind of an	
11 Q. Just speak up. If I start talking or		11 online resource that is -- you can't delete out of	
12 asking the next question and you're not finished		12 it. Essentially, once you put something in there,	
13 with your answer, just say, "I'm not quite done."		13 that's where it stays.	
14 Okay?		14 And everything from my case, to include	
15 A. Yes, ma'am.		15 transcriptions, was placed into that H drive and	
16 Q. So other than -- were there any other		16 into IA Pro.	
17 written documents aside from the CIRT report that		17 Q. And did you review any of that to	
18 you reviewed in preparation for today's deposition?		18 prepare for today's deposition?	
19 A. No.		19 A. Outside of the report that we previously	
20 Q. Okay. Did you meet with anyone in		20 mentioned, no.	
21 preparation for today's deposition?		21 Q. And so the final report is also included	
22 A. Craig Anderson.		22 in the H drive?	
23 Q. Okay. And I -- how long did you meet		23 A. Correct.	
24 with Craig for?		24 Q. Okay. Do you know approximately how big	
25 A. Approximately half an hour, 45 minutes.		25 the H drive is?	
	11		13
1 Q. Was that the only meeting that you had		1 A. No.	
2 with Craig about this deposition?		2 Q. Okay. Is it because it's so big?	
3 A. Yes.		3 A. There's multiple sections that work out	
4 Q. Did you review any documents during that		4 of our H drive; OIO and FIT. OIO is our non-deadly	
5 meeting?		5 use-of-force reviewing section. And then FIT is our	
6 A. I don't believe we did.		6 force investigation team, which does the criminal	
7 Q. Okay. Other than Craig or anyone from		7 side of officer-involved shootings or critical	
8 Craig's office, was anyone else present for that		8 incidents, and we all share the same H drive.	
9 meeting?		9 Q. And so is the H drive specific to the	
10 A. Ruth Miller.		10 matter, or is it just like a whole, like, inter --	
11 Q. And who's Ruth Miller?		11 like, inter-department thing?	
12 A. I believe that she's the head of		12 A. It's all of our case files for the year	
13 litigation for the department, or assistant.		13 that are open, and then there is a section for	
14 MR. ANDERSON: She's general counsel for		14 closed cases up to, I believe, 2012, when the	
15 the police department. Assistant general counsel.		15 inception of CIRT and OIO became existing.	
16 MS. MURPHY: Okay. What firm -- do you		16 Q. And so how would this -- Mr. Isaiah	
17 know what firm -- is she, like -- does she work for		17 Williams' case, would that be qual -- is that -- is	
18 the --		18 that a closed case or an open case as we sit here	
19 MR. ANDERSON: In-house, yeah. So she		19 today?	
20 is one of four attorneys for the police department		20 A. It is a closed case from the	
21 that handles litigation. So she's kind of like my		21 administrative side. I cannot speak on the criminal	
22 supervisor on these cases.		22 side. We don't handle that side of it.	
23 MS. MURPHY: Okay. Okay.		23 Q. And by "criminal side" -- I just want to	
24 BY MS. MURPHY:		24 make sure. Because I know that -- and we'll talk	
25 Q. And I'm assuming that you probably --		25 about it a little bit more in depth lately -- or	

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 later -- there's kind of the difference between what 2 you did, which was kind of like the civil analysis, 3 and then there was a criminal investigation about 4 the officer-involved shooting; correct?</p> <p>5 A. There was a criminal investigation done 6 from the Force Investigation Team. Our section 7 doesn't do the civil side of it. Our section is the 8 administrative side of it. So policy, training, 9 tactics, those sorts of things.</p> <p>10 And essentially, after the end of that, 11 it goes to a use-of-force board and a tactical 12 review board, which has -- the use-of-force board -- 13 four civilians and three department members voting 14 on the outcome of the use of force.</p> <p>15 Q. So when you say you don't know if it's 16 opened or closed, is it with any of those 17 departments it could still be open, or do you mean 18 the actual -- like, a different, like, underlying 19 investigation?</p> <p>20 A. The only investigations that are opened 21 up on our department as far as this case is 22 concerned, to my knowledge, is from FIT and CIRT.</p> <p>23 I cannot speak on FIT's side. I do not 24 work for FIT.</p> <p>25 But on our CIRT side, yes, it is closed.</p>	<p>14</p> <p>1 And then the last three have been in 2 CIRT -- sorry. The last six have been in CIRT. And 3 then -- sorry, what I previously forgot to mention 4 was PSU, which is the problem-solving unit. I was 5 there for about a year.</p> <p>6 Q. What is PSU?</p> <p>7 A. Essentially it's a patrol function out 8 of an area command. Goes between plainclothes and 9 uniform just depending on what the needs of the 10 station are to do either various plainclothes 11 operations or uniformed details.</p> <p>12 Q. And so how did you end up in CIRT?</p> <p>13 A. My partner in PD suggested that I come 14 do a TDY. And this was back in -- a temporary 15 assignment. This was back in 2019, very beginning. 16 I want to say January.</p> <p>17 And he suggested I come up because they 18 were having openings. And I came up and did a TDY 19 for approximately three months before becoming 20 full-time in July of 2019.</p> <p>21 Q. What's a TDY?</p> <p>22 A. A temporary assignment.</p> <p>23 Q. And so what's the purpose of a temporary 24 assignment?</p> <p>25 A. For our section it kind of determines if</p>
<p>1 Q. Okay. And so when you're saying it may 2 still be open, you're kind of saying, I don't know 3 what's going on with FIT?</p> <p>4 A. Correct. I can't speak one way or the 5 other.</p> <p>6 Q. Okay. Had you ever -- okay. I don't 7 want to jump ahead too far.</p> <p>8 Can you -- I want to kind of ask some 9 questions about your professional background.</p> <p>10 You mentioned earlier you've been with 11 the department for 16 years; is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Can you tell me -- can you kind 14 of walk me through your career arc with the 15 Las Vegas Metropolitan Police Department?</p> <p>16 A. Sure. A patrol officer for 17 approximately -- overall, approximately eight years, 18 I would say. I did a year as an FTO, which is a 19 field training officer.</p> <p>20 I also did a year in property crimes, 21 which is an old section that has now been dissolved, 22 as a detective there.</p> <p>23 And then I believe it was three years in 24 PD, which is patrol detective. It's essentially a 25 detective position within patrol.</p>	<p>15</p> <p>1 you can do the job. We're all police officers, and 2 we should have the knowledge of department training 3 and policies, but it goes a little bit farther. You 4 have to have the ability to write well. You have to 5 have the ability to public speak. A lot of our job 6 is giving long presentations.</p> <p>7 In this case I gave a 12-hour 8 presentation to executive staff, to the use-of-force 9 board, tactical review board. That is difficult for 10 some people to do, to speak in public settings, 11 especially in front of high-ranking people in our 12 department.</p> <p>13 And then also just have the knowledge of 14 tactics and training and policy within the 15 department.</p> <p>16 Q. And so the 12-hour presentation, in 17 some of the -- some of the documents that Craig 18 has produced, I saw some -- some PowerPoint 19 documents.</p> <p>20 Is that the 12-hour presentation 21 you did?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And in what context did you give 24 that 12-hour presentation?</p> <p>25 A. The use-of-force board and the tactical</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

	<p>18</p> <p>1 review board.</p> <p>2 Q. And what are those two different boards?</p> <p>3 A. They're two separate boards. They're</p> <p>4 done the same day. And essentially there's a</p> <p>5 PowerPoint presentation that is completed which kind</p> <p>6 of gives you the entirety of the case, which is</p> <p>7 essentially the report that is given, that 222-page,</p> <p>8 I believe it is, report, in a PowerPoint form, where</p> <p>9 you hear the testimony from officers, or sometimes</p> <p>10 civilians, but anybody that gave a quote. That is</p> <p>11 in that report. Essentially it's presented with</p> <p>12 movement slides, video to illustrate and give a full</p> <p>13 picture of the essence of the report and the case.</p> <p>14 And then there's a break.</p> <p>15 The -- would you like me to go into,</p> <p>16 like, exactly everything that happens in the</p> <p>17 use-of-force board?</p> <p>18 Q. Yeah. Absolutely, yeah.</p> <p>19 A. There's a break so the people who can</p> <p>20 vote on the board, which, again, are four civilian</p> <p>21 members and three department members, will have a</p> <p>22 deliberation on whether or not it falls into</p> <p>23 separate categories of our voting criteria. I</p> <p>24 believe it is administrative approval, tactics and</p> <p>25 decision-making, policy training failure, and</p>
	<p>19</p> <p>1 administrative disapproval are the four categories</p> <p>2 it can fall into.</p> <p>3 Once those individuals make their vote,</p> <p>4 everybody comes back in, they go over the findings</p> <p>5 of the use-of-force board, and then it goes into the</p> <p>6 tactical review board, which are the conclusions</p> <p>7 that you read in the back of that presentation -- or</p> <p>8 the report.</p> <p>9 Q. Okay. So just so that -- when you say</p> <p>10 the conclusions that you read in the back of the</p> <p>11 report, do you mean the CIRT report?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Because -- so I've looked over</p> <p>14 the tactical review board.</p> <p>15 A. Correct.</p> <p>16 Q. And is this -- and so is my</p> <p>17 understanding -- well, walk me through -- they -- so</p> <p>18 when they're saying, like, approved, like they've</p> <p>19 got these checkmarks where it says, like, approve</p> <p>20 [sic], modify, overturn, is this a result of your</p> <p>21 presentation?</p> <p>22 A. Correct. So the tactical review board</p> <p>23 is essentially -- it's been -- not restricted but,</p> <p>24 for lack of better terms, shrunk down as far as</p> <p>25 time.</p> <p>1 Back in 2022, when we did this, we</p> <p>2 read every single word of the conclusion as it</p> <p>3 read on the back of the report. As you can</p> <p>4 imagine, with the amount of conclusions that was</p> <p>5 in this case, it was a lot of reading. And</p> <p>6 essentially I read the conclusions into the record,</p> <p>7 and then the board votes on that. And the board in</p> <p>8 this case are no civilians because they are not</p> <p>9 expected to have any experience in our tactics,</p> <p>10 training, and policy.</p> <p>11 Q. Okay. And so -- sorry. I'll get back</p> <p>12 to it later. I don't -- I don't want to jump around</p> <p>13 too much.</p> <p>14 Other than your -- so you've got your</p> <p>15 16 years coming into your -- working as a -- working</p> <p>16 at LVMPD.</p> <p>17 Do you have any -- what's your highest</p> <p>18 level of education?</p> <p>19 A. I have a bachelor's degree in</p> <p>20 communications.</p> <p>21 Q. And where did you get that from?</p> <p>22 A. University of the Cumberlands in</p> <p>23 Kentucky.</p> <p>24 Q. Okay. And do you have any specialized</p> <p>25 training or certifications related to your current</p> <p>21</p> <p>1 profession?</p> <p>2 A. Are you talking about profession as a</p> <p>3 police officer or --</p> <p>4 Q. Yes.</p> <p>5 A. -- we've -- I can tell you there's been</p> <p>6 countless hours of training that I've received in my</p> <p>7 time on the department. I couldn't tell you.</p> <p>8 Q. So let me give you a better example, and</p> <p>9 perhaps it will make it easier to answer the</p> <p>10 question.</p> <p>11 Sometimes when people such as yourself</p> <p>12 answer that they will say, Oh, I did, like, a</p> <p>13 month-long course in explosive breaches or, like,</p> <p>14 some other kind of, like, specialized certification</p> <p>15 that's over and above.</p> <p>16 I know that you guys are doing training</p> <p>17 all the time. But do you -- so do you have</p> <p>18 anything, as we sit here today -- if you're like,</p> <p>19 Hey, it's just so many -- but do you have any other,</p> <p>20 like, specialized certifications that, like, if you</p> <p>21 went and applied for a job, like, you would list</p> <p>22 off?</p> <p>23 Do you know what I mean?</p> <p>24 A. Kind of. I would say that just</p> <p>25 based on the description of my position of the</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

	22		24
1 Critical Incident Review Team, you have to have a 2 vast knowledge or access to the department 3 procedures, policy, and training that we currently 4 implement.		1 A. Well, policy is also weaved into -- or 2 law is weaved into policy. 3 So you're talking about Graham versus 4 Connor and threat assessment for ability, 5 opportunity, and then jeopardy and preclusion. 6 Those are standards that are set 7 forth from the supreme court that we have in our 8 policy.	
5 I would say that's all of my training 6 that I've received in my time in the department. 7 There's no specific training that I could say would 8 be, like, Oh, this is a qualifier, this isn't a 9 qualifier, because, in essence, everything that I've 10 done, from blue-on-blue training for plainclothes 11 operations to just your regular certification as a 12 police officer, comes into play when you're talking 13 about looking at an incident from an administrative 14 investigation in its entirety.		9 Q. And you are currently an investigator 10 with CIRT; correct?	
15 Q. And so is that what you -- you've been 16 with CIRT for 16 years now. Is this what you --		11 A. Yes.	
17 A. Six years.		12 Q. And have you always held the position of 13 investigator for the six years you've been with 14 CIRT?	
18 Q. Sorry. Six years.		15 A. Yes. Detective. I'm sorry. 16 Investigator, detective. I guess same thing.	
19 Is this what you do all day every day?		17 Q. If I -- I'm not in it every day like you 18 are, and some of the nomenclature can be very 19 specific. So if I use a term improperly, feel free 20 to correct me on it.	
20 A. Yes, ma'am.		21 A. Sure. It wasn't -- if we're talking 22 about titles.	
21 Q. Okay. And you touched on it a little 22 bit, but can you describe to me with more 23 particularity what exactly your position at CIRT 24 entails?		23 Q. No, no, no. I want the record to be as 24 accurate as possible.	
25 A. I can give you an example.		25 A. Sure.	
	23		25
1 Essentially we do administrative 2 investigations on critical incidents, to include 3 any high-risk incidents, deadly force, in-custody 4 deaths, those sorts of things that are deemed 5 high risk and critical incidents on the department. 6 Example would be, if we have an 7 officer-involved shooting, we interview the involved 8 officers and the witnesses; we conduct briefings to 9 executive staff, subject matter experts, captains, 10 lieutenants; and then finally we do the use-of-force 11 board, tactical review board, and complete the 12 detailed report, which you have an example in front 13 of you.		1 Q. In fairness, it does list you in the 2 report as a -- like, a detective, but also an 3 investigator. 4 Yeah, Detective Roth, and you're listed 5 as the -- on the Critical Incident Review Team. 6 And my understanding is that you are 7 part of the -- you are an investigator; correct?	
14 Q. And so -- sorry -- what's the difference 15 between the use-of-force and the tactical review 16 boards?		8 A. Yes. 9 Q. Okay. Is there any -- and so what's 10 the -- what are the different -- how many other 11 people are on CIRT?	
17 A. So use-of-force only looks at the use of 18 force specifically, not any of the tactics or 19 training or policy that are attached to it outside 20 of our use-of-force policy.		12 A. That's a -- so are you talking about 13 current status right now or where it was in 2022?	
21 Essentially it is at the moment, the 22 time that force was used, did it meet our policy 23 and law.		14 Q. Let's talk about it in 2022. 15 A. I believe we were at that point at seven 16 detectives, one sergeant, one corrections officer 17 detective, and one corrections officer sergeant. I 18 believe that's where we were at. 19 We also have two executive support staff 20 which are civilians.	
24 Q. Okay. Well, not policy; just the law. 25 Correct?		21 That varies from time to time. Of 22 course over the year I believe we had one TDY come 23 through because I was taken off of an assignment to 24 handle this exclusively. So my spot in the rotation 25 with a gap, you can imagine with only six or seven	

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 people, with the amount of caseload we get usually 2 is between 52 and 70 a year, that can become pretty 3 daunting for a six-person unit.</p> <p>4 Q. Okay. And who -- do you have a 5 supervisor within the unit?</p> <p>6 A. I do. A sergeant and a lieutenant. But 7 a sergeant is my direct supervisor.</p> <p>8 Q. Okay. And who was it -- who was it at 9 the time that this was created in 2022?</p> <p>10 A. Sergeant Shawn Smaka.</p> <p>11 Q. And then who was the lieutenant?</p> <p>12 A. I believe it was Lieutenant Kurt 13 McKenzie.</p> <p>14 Q. Okay. And I've seen a couple -- was 15 there any other -- other than the people that you 16 were directly reporting to, Sergeant Smaka and 17 Lieutenant McKenzie, were there any other CIRT 18 detectives that were working alongside of you on 19 this, or were -- was this your only -- were you solo 20 on this project?</p> <p>21 A. So there's no solo in CIRT.</p> <p>22 Q. Okay.</p> <p>23 A. When I say I was pulled off of this to 24 handle this exclusively, so I wouldn't -- because of 25 the amount of interviews -- I believe I interviewed</p>	26	<p>1 A. So essentially in our -- they are people 2 in our organization that we show the investigation 3 to through a PowerPoint. The -- and they're 4 responsible for training on our department.</p> <p>5 So you have AOST, which is Advanced 6 Officers Skills Training, and then RBT, which is 7 Reality-Based Training, and the academy.</p> <p>8 You also have individuals from -- 9 leadership from firearms that come out. If you have 10 a specialty case like SWAT or Major Violators or 11 sections that wouldn't deal specifically with 12 patrol, then you would find somebody who had 13 recently either promoted out of there or left the 14 unit to weigh in on that.</p> <p>15 Q. Okay. And so you referenced the left 16 side of the -- you're going to have to excuse me. 17 I'll give you the first page of this. And it got a 18 little wrinkled in my bag.</p> <p>19 A. Sure.</p> <p>20 (Exhibit 2 marked.)</p> <p>21 BY MS. MURPHY:</p> <p>22 Q. You referenced the left-side column. 23 Is this the front page of the report and 24 the left-side column you were referring to?</p> <p>25 A. Correct.</p>	28
<p>1 somewhere north of 20 individuals in this case. 2 That's pretty rare. And in all those interviews, 3 usually you have to have another detective and your 4 supervisor along that.</p> <p>5 So when you're talking about our 6 workweek and then getting those interviews done, 7 preparing for those interviews, and actually doing 8 those interviews, it's a lot of work.</p> <p>9 CIRT in itself is a team effort, to 10 include from our SMEs, all those individuals 11 that are listed in the left column of that 12 report that you're referencing. It's never 13 Justin Roth's opinion. It's never Shawn Smaka's 14 opinion. It's collectively as a group when it comes 15 to the investigators, our chain of command, as well 16 as the SMEs that we bring in as part of the CIRT 17 process, to ensure that all bases are covered and we 18 get an accurate representation of our policy and 19 training.</p> <p>20 Q. Okay. And I know what an SME is, but 21 just for the record can you say?</p> <p>22 A. Subject matter expert.</p> <p>23 Q. And so what are the -- what are the -- 24 what's an SME? I mean, a subject matter -- but if 25 you can kind of explain to me what it is.</p>	27	<p>1 MS. MURPHY: Let the record reflect, and 2 we'll ask to attach this as Exhibit 2, this is the 3 first page of the Critical Incident Review Team 4 Administrative Report, and it's Bates LVMPD 4255.</p> <p>5 BY MS. MURPHY:</p> <p>6 Q. And so it's -- looking down at it -- so 7 the subject matter experts, the first grouping is 8 "Office of Internal Oversight."</p> <p>9 What is that?</p> <p>10 A. That is our section, CIRT and OIO. 11 Notwithstanding on FIT. They do not have access to 12 our information.</p> <p>13 So FIT is completely separated from any 14 administrative review for purposes of their criminal 15 investigation and 289 protection. Talking about 16 NRS 289. Because the officers who come in, their 17 statements cannot be used against them criminally 18 because they're being compelled to give those 19 statements. So they don't have access to our 20 information.</p> <p>21 Q. Okay. So who is Office of Internal 22 Oversight? Is that FIT or CIRT?</p> <p>23 A. That's CIRT and OIO.</p> <p>24 Q. Okay. Yeah, because you're listed on 25 here as well; correct?</p>	29

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

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1	A. Yes.	1	to me.
2	Q. Okay. So the Office of Internal	2	A. Sure. So I believe it was back in 2011
3	Oversight, for lack of a better term, that's CIRT?	3	the DOJ came in and had a list of requests to -- for
4	A. CIRT and OIO.	4	Metro to improve themselves. One of them was to
5	Q. What's -- okay.	5	have a bifurcated system of criminal and
6	A. Office of Internal Oversight.	6	administrative review of critical incidents, to
7	So they handle -- the two detectives at	7	include officer-involved shootings.
8	this point would be -- looks like just one detective	8	And that's when -- I believe it was
9	on there. They were probably in a transitional	9	2011 was when CIRT was stood up. It was either that
10	phase. But that would be Tim McAteer. I'm not sure	10	or 2012.
11	how to say his name too well. Sometimes I just call	11	Q. And if -- was part of the purpose to
12	him Tim. But it's the third one from the bottom,	12	determine whether or not somebody's -- to determine
13	above the sheriff's office executives. That would	13	if somebody's constitutional rights were violated
14	be a detective from OIO, not from our section. And	14	or not?
15	Sergeant Patrick Hughes would also be the OIO	15	A. No. The purpose was to do a complete
16	sergeant that is listed on here.	16	administrative investigation as far as CIRT, and
17	Q. Okay. That's an office -- but why are	17	also have a unilateral -- I guess that would be the
18	you listed under Office of Internal Oversight if	18	correct term maybe -- of the criminal investigation
19	you're CIRT?	19	with FIT.
20	A. It's the same thing. So it's a blanket	20	So two separate investigations going at
21	section. So our section is the Office of Internal	21	the same time. One criminal; one administrative.
22	Oversight and Constitutional Policing. That's our	22	Q. And who does the criminal?
23	whole umbrella section of CIRT, FIT, and OIO. IOCP.	23	A. FIT. The Force Investigation Team.
24	The Office of Internal Oversight,	24	Q. Sorry to go through all this.
25	because it's internal oversight, not criminal, would	25	A. It's fine.
	31		33
1	be OIO because they handle non-deadly-force	1	Q. So you don't have any involvement with
2	incidents such as tasers. They review all those	2	FIT; is that correct?
3	non-deadly-force incidents. And then Critical	3	A. Correct.
4	Incident Review Team also falls under the Office of	4	Q. Okay. And is part -- is part of your
5	Internal Oversight as far as use of deadly force and	5	administrative review in CIRT to determine whether
6	critical incidences.	6	the actions -- whatever actions you're investigating
7	Q. And, I'm sorry. You said something	7	complied with constitutional requirements?
8	about Office of the Constitution. Sorry. Can you	8	A. I don't know -- I'm trying to track
9	say that one more time?	9	where you're going on that.
10	A. It is the -- IOCP is the acronym. It's	10	Q. Sure. Let me -- strike that and let me
11	the -- now I just lost it. I know I just said it on	11	ask it better.
12	the record.	12	Are you looking -- is part of your
13	Office of Internal Oversight and	13	determination whether the actions of whichever
14	Constitutional Policing, I believe it is.	14	police officer -- officers you're investigating,
15	Q. And so that is the umbrella that CIRT --	15	if they complied with the constitutional
16	that you operate under in CIRT; correct?	16	requirements of administrating -- executing their
17	A. Correct. That would be CIRT, FIT, and	17	job duties?
18	OIO are a part of IOCP.	18	A. Yes and no.
19	I know Metro with their acronyms,	19	Q. Okay.
20	sometimes it can get confusing.	20	A. The "yes" part would be if that's woven
21	Q. And so what is -- what is the overall	21	into our policy, procedures. I'm not a lawyer, so I
22	umbrella organization then? Not the name of it, but	22	can't speak to a lot of some of the case law.
23	what's the purpose?	23	That's why we do have individuals who look at that.
24	I think the purpose is kind of spelled	24	However, my job specifically is a fact
25	out in the title, but I'd like you to explain it	25	finder. I gather all the information that I have

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

1 available, to include transcriptions, interviews, 2 what our practices were from a department procedure 3 at the time of the incident. Not two months down 4 the road, not three months down the road, not 5 practices from two years ago; what the officers and 6 supervisors were operating on at the time of the 7 incident. And then make a decision based on those 8 policies, training, and tactics. 9 It's not my opinion that is ever 10 interjected. My opinion is never interjected. It 11 is a strict fact-finding of our department policies, 12 procedures, and training. 13 Q. But there -- we'll get to some of the 14 conclusions later on in the deposition. There are 15 some conclusions about Fourth Amendment and "knock 16 and announce." 17 Did you have any part in developing 18 those conclusions? 19 A. As far as being involved in the meetings 20 with -- I believe you're talking about Anthony 21 Bandiero's involvement in this from Blue to Gold is 22 that I was there present for the meeting. We did 23 have discussions on those things. That's why his 24 input was put in there, because he is an SME. I 25 don't have any law training.	34 1 Q. Okay. 2 A. It's, again, a collaborative effort 3 between everybody in that section, people that we 4 reached out to as SMEs. 5 One of those individuals was Anthony 6 Bandiero, who gave his legal opinion on the "knock 7 and announce" specifically. 8 Q. And how did Mr. Bandiero provide his 9 legal opinion on "knock and announce"?
35 1 Q. Okay. And who is Anthony -- Anthony 2 Bandiero? 3 A. I believe he is the -- I don't know 4 his exact title, but he is a legal expert with 5 Blue to Gold. 6 Q. What's Blue to Gold? 7 A. It's a -- I believe it's a firm that 8 the department utilizes to go over many things as 9 far as law when it comes -- I think his specialty is 10 Fourth Amendment. 11 Q. Is the actual name of the firm 12 Blue to Gold? 13 A. Correct. 14 Q. Okay. 15 A. To my knowledge. 16 Q. No problem. 17 And he was the -- was he the subject 18 matter expert on constitutionality? 19 A. It's -- so for -- constitutionality, I'm 20 not sure what the -- how that question weaves -- 21 Q. Strike that. Strike it. Let me ask it 22 in a more direct way. 23 Was Mr. Bandiero the subject matter 24 expert on the Fourth Amendment? 25 A. Not entirely.	36 1 Q. Okay. 2 A. It's, again, a collaborative effort 3 between everybody in that section, people that we 4 reached out to as SMEs. 5 One of those individuals was Anthony 6 Bandiero, who gave his legal opinion on the "knock 7 and announce" specifically. 8 Q. And how did Mr. Bandiero provide his 9 legal opinion on "knock and announce"?
	37 1 deadly force. 2 Q. "Service of the Search Warrant - 3050 3 South Nellis Boulevard"?
	4 A. That could probably be a good starting 5 point because it goes into when the announcements 6 start to happen. I believe that's when his section 7 is in there.
	8 Q. Okay. Give me one moment. I'm going to 9 pull it up on my computer, and then I can search the 10 document.
	11 Do you know how to spell Mr. Bandiero's 12 last name? Maybe I'm spelling it wrong.
	13 A. Not entirely. But I guess if you search 14 "knock-and-announce," you'd probably get -- it would 15 probably be one of the first ones that would come up 16 reference "knock-and-announce," if you search the 17 document.
	18 Q. Okay.
	19 MR. ANDERSON: I've got his name if you 20 want.
	21 MS. MURPHY: Oh, yeah. How do you spell 22 it? Sorry. Thanks, Craig.
	23 MR. ANDERSON: B-a-n-d-i-e-r-o.
	24 BY MS. MURPHY:
	25 Q. Okay. All right. And so that's on

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

	38		40
<p>1 page 187. Give me just a moment.</p> <p>2 I'll give you the pages in just a</p> <p>3 moment, but it says, "CIRT consulted with</p> <p>4 search-and-seizure attorney Anthony Bandiero, the</p> <p>5 Senior Legal Instructor with Blue to Gold, who</p> <p>6 assisted in analyzing the following."</p> <p>7 Is that the section you're referring to?</p> <p>8 A. Correct, yes.</p> <p>9 Q. Okay. And then it says -- it reviews</p> <p>10 the SWAT Section Manual regarding Control Entry</p> <p>11 Tactic, which we'll call "CET" for the remainder of</p> <p>12 the deposition.</p> <p>13 And so I'll hand you this. Because I</p> <p>14 don't see that it's in italics. Or maybe it is.</p> <p>15 Rather than -- we can pull the pages out afterwards</p> <p>16 and make them part of the record. I'm just going to</p> <p>17 hand you right here.</p> <p>18 A. Okay.</p> <p>19 Q. And so where it refers to Mr. Bandiero,</p> <p>20 it starts at page 187 of the report, and that's</p> <p>21 Bates LVMPD 4441.</p> <p>22 A. Thank you.</p> <p>23 Okay. So this is the conclusion of</p> <p>24 where you're at. You're not in the body. You're in</p> <p>25 the conclusion table for, I believe, officers</p>		<p>1 the report at page 132. It goes into the SWAT</p> <p>2 Section Manual following -- referencing the use of</p> <p>3 CET. Goes into CET, and then into NRS Chapter 179,</p> <p>4 Section 1, a "no knock" warrant.</p> <p>5 Q. Yes.</p> <p>6 A. Correct. And then U.S. versus Banks,</p> <p>7 which is an LVMPD Ninth Circuit Court case.</p> <p>8 Q. And so -- I'm not trying to cut you off.</p> <p>9 So we're on page -- sorry?</p> <p>10 A. 133.</p> <p>11 Q. -- 133.</p> <p>12 And the italicized portion of that, is</p> <p>13 that from Mr. Bandiero's report?</p> <p>14 A. No. That one specifically is from the</p> <p>15 findings on the court case itself.</p> <p>16 Q. So that's a direct quote from the</p> <p>17 court case?</p> <p>18 A. Correct.</p> <p>19 Q. Okay.</p> <p>20 A. The same with 134 on Zabeti versus</p> <p>21 State, which again is also a LVMPD jurisdiction</p> <p>22 Ninth Circuit Court holding.</p> <p>23 Yeah, I don't think I mention Anthony</p> <p>24 Bandiero until the conclusion table.</p> <p>25 Q. Okay. And so just going forward to</p>	
	39		41
<p>1 approach, the general conclusion for "knock and</p> <p>2 announce."</p> <p>3 Q. Okay. So this was the only thing that</p> <p>4 popped up for Mr. Bandiero.</p> <p>5 A. Do I have your permission to go through</p> <p>6 this?</p> <p>7 Q. Absolutely. Absolutely.</p> <p>8 And I'll just represent to you,</p> <p>9 that's the copy of the report without my notes in</p> <p>10 it. So you can do whatever you want. That's</p> <p>11 essentially your version. You can do whatever you</p> <p>12 want with it.</p> <p>13 A. I guess I'm referencing then that</p> <p>14 section where we -- I made the conclusion where --</p> <p>15 that was on there. But that was referencing those</p> <p>16 pages in the service of the search warrant in the</p> <p>17 body.</p> <p>18 Q. Okay. So if you could -- and take as</p> <p>19 much time as you want.</p> <p>20 A. Sure.</p> <p>21 Q. If you could find the part -- because I</p> <p>22 was having a little bit of difficulty with that.</p> <p>23 But, yeah, I guess the part where -- I'll put in</p> <p>24 "knock and announce" too. The part where --</p> <p>25 A. So I believe I start to talk about it in</p>		<p>1 page 135 though, it's at the top of the page, "The</p> <p>2 technique is used when it is safest to dominate</p> <p>3 suspects with surprise, speed, and overwhelming</p> <p>4 action. A dynamic flooding technique is used to</p> <p>5 clear the structure."</p> <p>6 Then it goes on to state, "However,</p> <p>7 per United States v. Banks." Is this from -- is</p> <p>8 this -- is this -- sorry, the italicized portion of</p> <p>9 this, is this a quote from the case, or is this</p> <p>10 Mr. Bandiero's -- likely his analysis?</p> <p>11 A. So whenever -- you have to read the</p> <p>12 lead-in of that.</p> <p>13 So specifically you were talking about</p> <p>14 which paragraph?</p> <p>15 Q. I'm talking about -- I'm sorry. On</p> <p>16 page 135, it's the first full paragraph.</p> <p>17 A. I'm missing 135.</p> <p>18 Q. Oh. Here. You can use my page.</p> <p>19 A. I go 134 to 136.</p> <p>20 Q. I must have used it in a different</p> <p>21 deposition. My apologies.</p> <p>22 A. So I'm assuming the portion where you</p> <p>23 have highlighted here? Or which -- what were we</p> <p>24 talking about again?</p> <p>25 Q. Sorry. It's the first full paragraph at</p>	

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

	42		44	
<p>1 the top of the page that begins, "However, per 2 United States v. Banks."</p> <p>3 A. Yes. So it starts with not italicized. 4 So, "However, per United States v. Banks." Then it 5 goes into italicized once I get past "Banks." That 6 is from the holding itself.</p> <p>7 Q. Okay. So -- okay. And so in reading 8 your report, if it's either in quotes or italicized, 9 that means it's pulling from a different source; 10 right?</p> <p>11 A. Correct.</p> <p>12 Q. Sorry, just to confirm. I just want to 13 make sure I understand. 14 Although your recollection before having 15 gone through the report is that you had quoted 16 Mr. Bandiero earlier in the body of the report, but 17 now kind of flipping through -- I get how big the 18 report is --</p> <p>19 A. Sure.</p> <p>20 Q. -- and you haven't memorized it. But 21 kind of as we're flipping through the report now, 22 you're kind of amending that statement and saying, I 23 think I just referred to Mr. Bandiero's -- you know, 24 quoted from his memo or conclusion in the conclusion 25 section of the CIRT report?</p>		<p>1 like, a verbatim on our meeting as far as -- 2 Q. I -- sorry. Go ahead. 3 A. -- as far as what Mr. Bandiero said 4 specifically. But anything that he said I took as 5 what he meant, and that was his input as an SME. I 6 didn't change it. I didn't -- yeah, it's exactly 7 what I wrote in there, and that's why it's in 8 italics.</p> <p>9 Q. And so if you can go to page 188. 10 A. Okay. 11 Q. And this kind of -- this is -- did you 12 write this report? 13 A. I did. 14 Q. Okay. You authored the entire thing? 15 A. Correct. 16 Q. Okay. And so -- and we're in the 17 paragraph -- it's the one, two, three -- it's the 18 fourth full paragraph, that starts with the word 19 "Looking." 20 A. Okay. So while this is not in 21 italics, and that's probably just an in-house 22 error, but because I said he analyzed "the 23 following" on the previous, I believe this is still 24 all his statement, up until the point where it says 25 "certain SMEs."</p>		
<p>1 A. I believe so. If it's not -- if you 2 searched for his name in there and it's not -- like 3 I said, three years ago, on top of being a 222-page 4 report, hard to memorize the entirety of it, and 5 sometimes it blends together, especially when you're 6 talking about the intricacies that went into this 7 investigation.</p> <p>8 Q. As we sit here today though, and 9 you've had kind of the opportunity to kind of go 10 through this, if you can kind of walk me through, 11 what do you remember Mr. Bandiero's conclusions 12 being?</p> <p>13 A. Strictly law-based. He does not have 14 the knowledge of our policies, training, and 15 procedures. He was strictly looking at it from a 16 legal aspect and not a department member, what 17 they're trained on, and what their department 18 manual says.</p> <p>19 Q. Thank you.</p> <p>20 And regarding his conclusions as 21 looking at it from just a legal perspective, do you 22 remember what -- do you remember what he relayed his 23 conclusions as being?</p> <p>24 A. Whatever was written in there. I can 25 read it for you if you'd like. I can't tell you,</p>	43		<p>1 Q. Can you just point to me on the page 2 where it says he analyzed "the following"? 3 A. So it would be on page 187, and it is, 4 "CIRT consulted with search-and-seizure attorney 5 Anthony Bandiero, senior legal instructor with Blue 6 to Gold, who assisted in analyzing the following." 7 Q. Okay. And so if I understand your 8 testimony, as we're going through page 187 and 188, 9 where -- even though it's not in italics, where it 10 is doing an analysis, like looking at the totality 11 of the circumstances, like that dialogue, that is 12 actually pulled from Mr. Bandiero's opinions or 13 whatever report he provided to you? 14 A. Correct. 15 Q. Okay. And as we sit here today, just so 16 I understand, as you're telling me, Hey, this is 17 pulled all from him, it should have been in italics, 18 but it's not? 19 A. As his analysis, yes. 20 Q. Okay. So this was -- even though you 21 wrote -- even though you wrote the report, this 22 isn't your analysis; this is the analysis -- 23 although you're incorporating it into the report, 24 this is the analysis of the subject matter expert 25 Mr. Bandiero?</p>	45

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 A. Correct. And the reason why it was 2 placed in there the way it was is because, again, 3 SMEs in this matter were split on what their opinion 4 was on whether or not this constituted a "no knock" 5 warrant or if it was reasonable. And SMEs were 6 pulled from previous SWAT operators as well as 7 Mr. Bandiero. And in fairness, and, again, in 8 fact-finding, everything that was put into those 9 were put into the report for the board to make a 10 decision, again, without my opinion.</p> <p>11 Q. And so, Justin, if you could -- I 12 apologize. I have read this report quite a few 13 times. But can you point out to me in this --</p> <p>14 MS. MURPHY: Actually, before we move 15 on, can we make page 187 and 188 -- we're going to 16 make that Exhibit 3 to today's deposition 17 transcript.</p> <p>18 (Exhibit 3 marked.)</p> <p>19 BY MS. MURPHY:</p> <p>20 Q. So, Justin, can you point me to another 21 place in the report where you quoted a different 22 SME that had come to an alternate conclusion than 23 Mr. Bandiero?</p> <p>24 A. So part of that would be the supreme 25 court cases of United States versus Banks and Zabeti</p>	46	<p>1 And that's specifically to those SWAT 2 SMEs and the SMEs that we utilized on this case. 3 And then it goes into the analysis from 4 Anthony Bandiero in Blue to Gold, and it was why 5 there was that split of their references.</p> <p>6 Q. Okay. And so Mr. Bandiero thought -- if 7 I understand his conclusion, he thought that it 8 wasn't a sufficient amount of time; correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. But when you say "SWAT SMEs," do 11 you mean that's, like, guys from SWAT?</p> <p>12 A. Not -- not -- not actively in SWAT. 13 They would have no involvement in this 14 investigation.</p> <p>15 Q. Okay. So they are former SWAT members?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And do you remember who those 18 were?</p> <p>19 A. I don't. There should have been a 20 sign-in sheet that was in the record. If there 21 wasn't, that means we didn't do them back then. 22 Again, it's six years of this. We've changed how we 23 do things at some points.</p> <p>24 But one of them was TJ Jenkins. He was 25 a sergeant who had just previously retired. And I</p>	48
<p>1 versus State, which, I believe -- I said, "SMEs 2 referenced the United States Supreme Court case 3 United States versus Banks, which held the 4 appropriate amount of time which is deemed to be 5 reasonable before entering with force was 15 to 6 20 seconds. However, this determination was 7 case-specific to United States versus Banks."</p> <p>8 That was the first time I referenced 9 their opinion on that. And that's a little bit 10 higher than halfway on the page of page 187.</p> <p>11 And then the next paragraph is, 12 "Further, SMEs also referenced Nevada Supreme Court 13 case Zabeti versus State, which held the totality of 14 the circumstances which were presented at the time 15 made it reasonable to wait less than 10 seconds 16 before entering the structure."</p> <p>17 I then wrote, "This too was also 18 case-specific."</p> <p>19 And then the next paragraph is, "It 20 should be noted that SMEs believed the totality of 21 the circumstances known to the SWAT officers and the 22 time frame allotted by SWAT operators before 23 entering 3050 South Nellis Boulevard, Apartment 24 1125, by force after giving verbal announcements via 25 the bullhorn was reasonable."</p>	47	<p>1 remember the other one was a retired sergeant, Andy 2 Pennucci.</p> <p>3 Those were two specific individuals that 4 were called in.</p> <p>5 Q. And were they on the tactical review 6 board, or are they part of CIRT?</p> <p>7 A. No. They are neither. They 8 actually both were retired. TJ Jenkins was 9 recently -- he retired out of SWAT a short time 10 after, so he had knowledge of their current 11 procedures and tactics.</p> <p>12 Sergeant Pennucci had not been there for 13 five or six years, I want to say. Maybe even 14 longer. And we were getting his perspective just 15 from an overall aspect.</p> <p>16 Q. Okay. But their perspective is as a 17 SWAT operator, not as trained legal analysis; 18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Can I -- as I've gone through this -- 21 and I kind of want to know if you know or not.</p> <p>22 Does the time that you're supposed to 23 start -- the time in these court cases and the time 24 that you start counting, do you start counting at 25 the very beginning of the announcement or when the</p>	49

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 announcement is concluded?</p> <p>2 A. There's no reasonable -- I mean, there's</p> <p>3 no standard set forth. And that's part of the</p> <p>4 problem is you can look at Zabeti versus State and</p> <p>5 you can look at United States versus Banks, and</p> <p>6 while there are seconds and examples of when it's</p> <p>7 appropriate or when it's reasonable to make an entry</p> <p>8 into a structure after announcements are given,</p> <p>9 there's not specifics on this is exactly when this</p> <p>10 should happen, regardless of the case.</p> <p>11 Like I said before in the report, Banks</p> <p>12 was 15 to 20 seconds is what they found reasonable.</p> <p>13 And then in Zabeti it was less than 10 seconds was</p> <p>14 found reasonable.</p> <p>15 So I believe when Anthony Bandiero</p> <p>16 looked at this, he looked at the totality of the</p> <p>17 circumstances from a legal perspective, not</p> <p>18 necessarily from a department's perspective, on how</p> <p>19 we have our -- or how we had our manual.</p> <p>20 And that's why this conclusion, when it</p> <p>21 was written at the end of this investigation, was it</p> <p>22 was a policy and training failure.</p> <p>23 Q. But let me -- let me -- let me go back</p> <p>24 to one statement you just said.</p> <p>25 You said "after announcements are</p>	50	<p>1 A. When there is a megaphone that is</p> <p>2 amplified sounds at 5:00 in the morning on a search</p> <p>3 warrant.</p> <p>4 Q. I under -- thank you for that answer. I</p> <p>5 understand the factual -- I understand kind of the</p> <p>6 factual outline of it. My question is a little bit</p> <p>7 different to you.</p> <p>8 My question is, when you're analyzing</p> <p>9 this and you start counting the seconds -- and we'll</p> <p>10 go over all that. You have written a very detailed</p> <p>11 report. I have no doubt when you started doing</p> <p>12 anything on anything in this investigation. But my</p> <p>13 question is a little bit different, and I will try</p> <p>14 to ask it better so that it's clearer.</p> <p>15 Where did you come up -- how was it</p> <p>16 determined that the counting should start when the</p> <p>17 first word comes out versus when the announcements</p> <p>18 are concluded?</p> <p>19 A. So I don't know what the decision was on</p> <p>20 that. My kind of recollection would be once the</p> <p>21 announcements start, that is an announcement. Just</p> <p>22 because it's finished within a second or two seconds</p> <p>23 doesn't mean that that's a full announcement. The</p> <p>24 announcements had started. I believe they started</p> <p>25 with "Police department, search warrant," or</p>	52
<p>1 given," and that's the point of my question.</p> <p>2 Do you start counting after the</p> <p>3 announcements are given or from the second the</p> <p>4 announcements start?</p> <p>5 A. We started ours from, I believe -- I</p> <p>6 couldn't tell you exactly just from what we did.</p> <p>7 But if we replayed the video, I could tell you</p> <p>8 exactly. But I believe it was from the start of</p> <p>9 those announcements. And I can maybe reference it</p> <p>10 inside of the report when I lead in.</p> <p>11 Q. Sure. We'll get to that in a minute.</p> <p>12 My point was a little bit different though.</p> <p>13 After having concluded this</p> <p>14 investigation and having gotten the opinion from the</p> <p>15 different SMEs, is it your understanding that when</p> <p>16 the cases count the seconds, when you guys are</p> <p>17 talking about seconds within the report -- because</p> <p>18 the term you just said was "after announcements are</p> <p>19 given." So do you count from the time the</p> <p>20 announcement ends, or do you count from the time</p> <p>21 when the first word comes out of their mouth?</p> <p>22 A. I believe it was from the first word is</p> <p>23 when we started our count on that one.</p> <p>24 Q. And where did you come up with that's</p> <p>25 when you should start counting?</p>	51	<p>1 something along those lines. But from the start of</p> <p>2 the announcements is what we went with.</p> <p>3 And -- does that answer your question?</p> <p>4 Q. Yeah. To your recollection, was there</p> <p>5 any debate or discussion of, like, do we start</p> <p>6 counting when they start the announcement, or do we</p> <p>7 start counting when -- like, when they get through</p> <p>8 the first couple, it's the police department; we're</p> <p>9 here to serve a search warrant?</p> <p>10 Was there any discussion about that?</p> <p>11 A. I don't recall one way or the other.</p> <p>12 Q. Okay. So was it fair for me to think</p> <p>13 though, based on the answers that you've just given,</p> <p>14 that if you don't recall, then you just kind of took</p> <p>15 it as this is when we start counting?</p> <p>16 A. Sure. In the same way that when we look</p> <p>17 at a use-of-force investigation and we'll talk about</p> <p>18 the start of a shooting, I don't say that the person</p> <p>19 started shooting after the last round was fired. I</p> <p>20 start my investigation when -- the second the first</p> <p>21 round is fired.</p> <p>22 So in the same respect, that's how I</p> <p>23 believe I interpreted the announcements.</p> <p>24 Q. Okay. You understand -- what's your</p> <p>25 understanding of the purpose of "knock and</p>	53

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

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1	announce"?	1	then you complete those interviews, then you have to
2	A. As Anthony Bandiero put in there, the	2	go back and listen to those interviews and then
3	reasonable amount of time for a person to submit	3	proof those interviews as a -- you do it usually
4	to -- or give the person a reasonable amount of time	4	yourself. You do have assistance from people on the
5	to submit to the service of the search warrant. I	5	team on some of the ones that maybe necessarily I
6	guess -- I believe he wrote in here, "to save his	6	don't need to hear through its entirety again. But
7	door," which I feel is a legal term. It's not in	7	I participated in every single one of the
8	our policies, our procedures. But I believe "save	8	interviews. Then those have to be determined what
9	his door" was mentioned.	9	goes in the report, what doesn't go in the report.
10	Q. And I'll just represent to you, Justin,	10	So it's a lengthy -- it's a lengthy
11	that's a term that's kind of used through some	11	process.
12	different cases.	12	Q. I'm familiar.
13	A. Sure.	13	What -- you didn't lead -- did you lead
14	Q. So -- but -- so just to confirm, as we	14	every single interview?
15	sit here today, the counting starts when the first	15	A. I believe I did, yes.
16	word comes out of their mouth?	16	Q. Okay. And about how much time would it
17	A. Sure. Yes.	17	take -- just give me a ballpark. I know each one is
18	Q. And that was your understanding of	18	going to be different. I'm going to pull out a
19	that's how we count, and that's consistent with the	19	couple of specific ones.
20	case law that was -- analyzed these items?	20	But on average, like, how long did it
21	A. Correct.	21	take to prepare for each interview?
22	Q. Okay.	22	A. When you're talking about an operator
23	A. And in that same, I guess, statement is	23	who has a body-worn camera, you have to review all
24	that was never corrected if that was not the case by	24	the body-worn camera. Go over the radio traffic
25	Anthony Bandiero. His assumption, again, too, when	25	that was given. Any of the prearrival stuff, when
	55		57
1	he analyzed it, when we talk about the 6 seconds	1	you talk about the plan -- when we're talking
2	from when the stun stick goes in the window and then	2	specifically here about SWAT, go over their plan to
3	the 16 seconds overall from a time lapse of the time	3	make sure that their plan was sound when they had --
4	of announcements to time of body entry was also done	4	on the way to make entry, to make sure everybody was
5	from that same standpoint. So the legal expert also	5	on the same page.
6	went with that same conclusion.	6	Outside of whether or not it was good,
7	Q. Okay. And so you talk about the six	7	bad, or indifferent, looking at every -- all the
8	seconds. And we'll get into the real -- the	8	interpersonal communications so you can ask
9	timeline that you've outlined in here. That's when	9	questions on that.
10	the stun -- that's when the first entry is made into	10	So on these, it's probably a couple of
11	the apartment; correct?	11	days per person on the front end.
12	A. That's when the stun stick is made into	12	Q. And I should have asked this before.
13	the apartment. There is no body entry. However,	13	How did you get assigned this case?
14	there is an entry of one of our devices, which is a	14	A. I volunteered. Very smart of me,
15	stun stick.	15	wasn't it?
16	Q. All right. How long did it take you to	16	Q. Walk me through the -- walk me through
17	write this report?	17	the thought process of volunteering for this and why
18	A. Roughly -- roughly a year. There was a	18	it was open to volunteer.
19	lot -- there was a lot of interviews that were	19	A. It was not open to volunteer.
20	completed. I want to say 22. But when you get	20	Q. That's a two-part question.
21	those interviews, especially when you're talking	21	A. It never is open to volunteer.
22	about a five-shooter -- in this case, there were	22	In this case, I had extensive knowledge
23	five officers who shot -- those are very long	23	of search warrants, and the person who was up in our
24	interviews usually. At least two hours.	24	rotation did not have the same experience in search
25	After you prep for those interviews,	25	warrants that I had, and it was just an executive

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 decision to make me the case agent.</p> <p>2 Q. And we went through -- we went through</p> <p>3 your professional background earlier in the</p> <p>4 deposition. And I am not an expert in this, so walk</p> <p>5 me through.</p> <p>6 What about what you've done, either in</p> <p>7 CIRT or your other roles in LVMPD, what made you an</p> <p>8 expert in search warrants?</p> <p>9 A. I've authored dozens of search warrants</p> <p>10 for narcotics, for property, for bodies of</p> <p>11 individuals through PSU, through property crimes,</p> <p>12 and through PD. So almost five years of experience.</p> <p>13 And sometimes in patrol, because I had</p> <p>14 that experience and then went back to patrol at a</p> <p>15 certain time to be an FTO, I did utilize some of</p> <p>16 those search warrant skills, to include buccal</p> <p>17 swabs, those type of search warrants, when</p> <p>18 detectives weren't available. During our time when</p> <p>19 I was in Bolden area command, we had three days out</p> <p>20 of the four that we were in operation where we did</p> <p>21 not have access to detectives, so I was de facto</p> <p>22 detective and FTO.</p> <p>23 Q. So tell me if I'm right or wrong. This</p> <p>24 kind of popped -- like, it's a six- or seven-person</p> <p>25 team; right? So it's like you guys are aware of</p>	58	<p>1 What's the callout?</p> <p>2 A. So at that point I believe we had a</p> <p>3 four-team rotation with -- because I believe we had</p> <p>4 seven at the time. We had one person that would be</p> <p>5 on their own on the rotation. So we go week-to-week</p> <p>6 rotations.</p> <p>7 So for an example, last week I was up,</p> <p>8 but I wasn't up for a case. So if we had any</p> <p>9 callouts for CIRT -- which we did, we had a CIRT</p> <p>10 callout -- I would respond as that responding</p> <p>11 detective to get a preliminary investigation, to</p> <p>12 admonish any of the individuals who were involved,</p> <p>13 and to review body-worn camera before, as a</p> <p>14 preliminary investigation, to see if it does meet</p> <p>15 our criteria to become a CIRT case.</p> <p>16 Q. Okay. But this one, if I understand,</p> <p>17 you weren't on the callout on Mr. Williams' case?</p> <p>18 A. Correct.</p> <p>19 Q. Sorry. I interrupted you before. You</p> <p>20 were walking me through why it was -- kind of, like,</p> <p>21 what your understanding of the case was and why you</p> <p>22 volunteered.</p> <p>23 A. Sure. So after that callout happens,</p> <p>24 the team that went out, usually two detectives,</p> <p>25 sergeant, lieutenant, and our captain, among</p>	60
<p>1 what the other ones are working on. Is that fair?</p> <p>2 A. Yes.</p> <p>3 Q. So you were kind of aware of this</p> <p>4 Alexander case and that it has to do with, you know,</p> <p>5 a search warrant --</p> <p>6 A. Alexander?</p> <p>7 Q. Sorry. Well, Isaiah Williams.</p> <p>8 A. Okay.</p> <p>9 Q. Sorry. You were aware of the Isaiah</p> <p>10 Williams case.</p> <p>11 If you can tell me, if you can</p> <p>12 recollect, kind of, when you then said "volunteer,"</p> <p>13 what was it about Mr. Williams' case that made you</p> <p>14 think it was going to be related to search warrants</p> <p>15 and you would be the appropriate -- you would</p> <p>16 probably be the best person on the team to handle</p> <p>17 this investigation?</p> <p>18 A. It was a SWAT search warrant for a</p> <p>19 homicide subject and the weapons used in a homicide.</p> <p>20 And when it -- I didn't go to the callout that night</p> <p>21 or that morning. That was a different team. Our</p> <p>22 callout rotation doesn't work hand in hand with</p> <p>23 who's up.</p> <p>24 Q. What's -- what's -- sorry. I'm going to</p> <p>25 interrupt you, and I'll try not to do it again.</p>	59	<p>1 everybody else -- DA's office, FIT, DIO -- all of</p> <p>2 these entities that go on an officer-involved</p> <p>3 shooting came back to our office, and that's where</p> <p>4 we were at during our normal course of duties. We</p> <p>5 log on at 7:00.</p> <p>6 And we started reviewing what we knew of</p> <p>7 the case at that point. We knew that there was a</p> <p>8 search warrant service. And because I had</p> <p>9 experience and I was next up, that we just decided</p> <p>10 to swap with the detective who was currently up just</p> <p>11 so I could have that knowledge and bring that</p> <p>12 knowledge to the investigation.</p> <p>13 Q. So you volunteered for this. At the</p> <p>14 time you volunteered -- and I -- if you can</p> <p>15 remember, did you anticipate this would be such an</p> <p>16 undertaking, or did you have -- did you have kind</p> <p>17 of -- do you know what I mean?</p> <p>18 A. Every officer-involved shooting that</p> <p>19 we handle is an undertaking. You're dealing with</p> <p>20 an officer, worst day on their career. Whether</p> <p>21 or not -- no matter what the circumstances are,</p> <p>22 that officer used deadly force. So that's never</p> <p>23 taken lightly. That's never taken with an</p> <p>24 understanding that this is an easy case or this is a</p> <p>25 hard case.</p>	61

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

1 The fact that I looked at was, when we 2 were game-planning on how we were going to start our 3 interviews, how we were going to conduct this 4 investigation. Because it was the SWAT service of a 5 search warrant and I had experience with that from 6 an investigator side, I -- I volunteered to take it. 7 Q. And you just said that you were 8 game-planning on how to start the interviews. 9 What thought process goes into that, and 10 what do you mean by "game-planning"? 11 A. Well, we're expected to do an initial -- 12 we used to call it a 72-hour brief. That's what FIT 13 does. FIT briefs executive staff within 72 hours of 14 the investigation, and that then becomes the YouTube 15 clip you see as part of the transparency of the 16 department, where we show body-worn camera that we 17 have. Usually it's done by an assistant sheriff or 18 the undersheriff. Sometimes, if none of those are 19 available, a deputy chief. But somebody 20 representing Kevin McMahill, the sheriff. Or at 21 this time -- this time it was Joe Lombardo. I'm 22 sorry. Kevin was not here at that point. 23 But that's when they have the press 24 conference. They go over the case and the details 25 as we know it at the time. That's the 72 from the	62	1 individuals who just had the worst night of their 2 life. They had to take someone's life. And in this 3 case two officers got shot, one very badly. So 4 it's -- you have to prepare them and prepare 5 yourself to make that. So that's part of that 6 preparation. 7 Q. And then, Justin, I'm going to ask you 8 just one follow-up question, and then let's take a 9 brief break. 10 A. Okay. 11 Q. Okay. You talked about, kind of, the 12 YouTube video and the initial press release or the 13 initial statement given by the police department. 14 That -- and I want to make sure I 15 understand your testimony here. That would be 16 something that, kind of, like, FIT was more involved 17 in, not CIRT? 18 A. Correct. We don't even have -- we have 19 zero involvement in that. 20 I usually watch the press conferences 21 from my phone when they go live to see what their 22 presentation is. Sometimes we are allowed in the 23 room for the FIT presentation. But, again, we have 24 no -- it's stuff that we already know. They're 25 looking at it from a very rudimentary point of they	64
1 FIT side. 2 We have a 72, in quotes, on our side. 3 It's usually within a week after the initial 4 presentation from FIT. And what we try to do is get 5 all of the shooters, at a minimum, interviewed so 6 it's fresh in their memory, and then present those 7 facts to executive staff based on the administrative 8 investigation. 9 Because in most cases, I would say 10 90 percent of cases, 95 percent of cases, officers 11 are not required to talk to FIT, and they don't. 12 However, they are required to talk to us if they're 13 given 48 hours of notice. That's per NRS, and 14 that's also per our department policy, that they're 15 compelled to do so. 16 So we give executive staff a briefing on 17 why they made a decision to utilize deadly force. 18 That's part of the game plan is getting those 19 interviews done initially and first. 20 Again, when you're talking about five 21 officers on one shooting, it is a lot of work, a lot 22 of preparation, a lot of time, even spending your 23 off time coming in and making sure that you're 24 prepared for those. 25 Because, again, you're dealing with five	63	1 have no interviews from any of the officers, they 2 have no -- all they have to operate on essentially 3 is witness statements from individuals who are 4 nearby. 5 In this case I believe they went off 6 statements on the upstairs neighbors and then any 7 witness officers, who are compelled to talk to FIT. 8 But if they're deemed to be a subject, they don't 9 talk usually. 10 And this is basically their presentation 11 of what happened on the use of deadly force, not on 12 tactics, training, and policy. 13 MS. MURPHY: Okay. 14 THE VIDEOGRAPHER: Off the record at 15 10:22 a.m. 16 (A break was taken.) 17 THE VIDEOGRAPHER: On the record at 18 10:36 a.m. 19 BY MS. MURPHY: 20 Q. All right. So, Justin, before we took a 21 break, we were talking briefly about the initial 22 press release involving FIT. 23 And I understand based on your prior 24 testimony you don't have anything -- you watched the 25 press conference too?	65

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

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1 A. Correct.		1 the PPA, which is the LV -- the Las Vegas Police	
2 Q. Okay. And so -- and, I'm sorry, you		2 Protective Association. And then for supervisors,	
3 told me before, and now I don't remember. You have		3 in this case Sergeant Backman would have been the	
4 a goal to get, like, the officers-involved		4 PSMA, which is Patrol Supervisors Management	
5 statements done within how long after the shooting		5 Association, I believe is what they are. And that	
6 itself?		6 can vary in whoever represents them.	
7 A. So we try as soon as possible, but		7 So it's not specifically two people or	
8 officers are required a 48-hour notice of interview		8 one person that goes every single time. It could be	
9 per law before we interview them. So at a minimum,		9 various individuals within those organizations.	
10 48 hours. But you still have to talk about the time		10 Q. Okay. And part of the reason -- and you	
11 it takes to prepare for that. And if I have any		11 referenced it before, but I just want to confirm.	
12 type of allegations of misconduct, I have to put		12 Part of the reason that they have representation	
13 that on the notice that is given to them. Again,		13 there is because they are compelled to testify;	
14 part of that 48-hour notice. So that does take up		14 correct?	
15 time, to see if there are any issues we see from an		15 A. Yes. And everything that we notice them	
16 administrative investigation.		16 in the lead-in to the interview in our script, which	
17 So usually, to answer your question,		17 says, "Anything you say can be used against you in a	
18 we try to do it within the week with the shooter		18 civil proceeding," and they acknowledge that, but	
19 and any direct witnesses. Sometimes after that.		19 they cannot be used against them in a criminal	
20 It's just based on time and availability for our		20 proceeding, per Garrity.	
21 section.		21 Q. And so I noticed as part of the closing	
22 Q. Okay. And if I remember correctly,		22 of either all or most of your interviews you kind of	
23 these got all done within about a week and a half of		23 went through a list of the deadly force assessment;	
24 the actual shooting; correct?		24 correct?	
25 A. That sounds about right. And it's		25 A. Correct.	
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1 because they're also on administrative leave, so		1 Q. Okay.	
2 then they become available to us Monday through		2 A. If they're involved as a subject officer	
3 Friday, on our schedule, so we don't have to worry		3 in the shooting.	
4 about shift-adjusting people or people coming in on		4 So if they were a witness, we do not go	
5 their days off when they're not required to.		5 on their perspective of what they thought the use of	
6 When they're in an administrative		6 force was.	
7 investigation because they're involved in a		7 Q. And so is that part of, like -- like, do	
8 shooting, we have kind of carte blanche to set up		8 you have, like, an -- do you have, like, a script	
9 those interviews, as long as they have		9 for that?	
10 representation availability.		10 Like, every time there's an	
11 Q. And who was the -- and I -- I've		11 officer-involved shooting, you ask them these, like,	
12 reviewed all the interviews, so I'm going to ask you		12 delineated questions about use of force?	
13 some questions just because I want to make a clean		13 A. Yes. And that specifically is the	
14 record on this.		14 threat assessment, and then Graham versus Connor,	
15 A. Okay.		15 which are -- by law we're only required to ask the	
16 Q. Who is it -- who is it that -- who is it		16 three -- the first three questions of that. But	
17 that's present with the officers?		17 we've expanded it to eight questions, five	
18 A. It varies. You're talking about, in		18 additional, per LVMPD policy.	
19 this case, two different unions. You have -- and		19 Q. Okay. And it looked like most of the	
20 I'm not sure if one guy was not union. I don't		20 interviews were about an hour or two.	
21 know -- I can't remember if Rothenburg, Officer		21 Is that accurate, to your recollection?	
22 Rothenburg, was union back then. I'd have to look		22 A. Subject officers, usually around two	
23 on the record of those transcripts of who his		23 hours.	
24 representatives were.		24 Witness officers, especially when you're	
25 But for officers or sergeants, it can be		25 talking about SWAT operators that were on the stack	

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 that didn't utilize force or were not involved in 2 the planning, then we're just trying to get their 3 perspective of what happened, probably an hour. 4 Because it was a short time lapse of time from the 5 time that they started their planning process 6 outside, they made their travel, and then they 7 landed at the apartment complex and continued with 8 the service of the search warrant. We're talking 9 about maybe less than an hour, so it's just their 10 perspective on that. So it usually takes less than 11 an hour for those individuals.</p> <p>12 Q. Okay. I know from my own experience as 13 a lawyer that sometimes how a transcript reads and 14 how it seems when you're sitting there are two very 15 different things.</p> <p>16 A. Sure.</p> <p>17 Q. And so most of the interviews, with the 18 exception of Melanie O'Daniel's, seemed like they 19 were -- maybe friendly is not the right word, but 20 open perhaps is a better word, or cordial.</p> <p>21 I mean, what was the -- kind of, did the 22 affect -- with the exception of Melanie O'Daniel's, 23 did the affect of any of the officers stand out to 24 you at all?</p> <p>25 A. So I'll say one thing first is that I</p>	<p>70</p> <p>1 I remember specifically in this case -- 2 I don't remember who -- I remember maybe Brice 3 Clements, I believe we had to stop his interview 4 because he was getting emotional.</p> <p>5 But even that, they took a human life, 6 and that doesn't weigh -- I mean, that weighs very 7 heavily on all those guys. Regardless of the 8 criminal background or the reason why they're there, 9 it's a hard thing for a human being to -- to, you 10 know, deal with.</p> <p>11 Q. Okay. And you talked a little bit 12 earlier about you have to ask some key questions in 13 this matter.</p> <p>14 I've read the -- I've read all the 15 interview transcripts. But, as we sit here today, 16 if you could maybe list, like, the top two or 17 three, what did you think were really the vital 18 questions that you needed to ask the officers 19 involved in this case?</p> <p>20 A. Well, why did you fire your firearm?</p> <p>21 That's the biggest one. Why did you make the 22 decision to use deadly force? That's the biggest 23 question.</p> <p>24 And everything else stems off of that 25 because then you have all the follow-up questions</p>
<p>1 don't think Melanie O'Daniel's interviews -- we did 2 two with her -- were adversarial at all. Maybe it 3 has that tone from the -- from the words. I don't 4 think it was adversarial.</p> <p>5 We have the responsibility to ask tough 6 questions. Sometimes officers or supervisors take 7 offense to that because they believe they were doing 8 what they believed was right. And a lot of times 9 that is the case. However, our responsibility of 10 CIRT is to ask those tough questions. So it does 11 come off sometimes that we're maybe being the bad 12 guys. However, those questions need to be asked.</p> <p>13 I don't think that -- I know for a fact 14 that this did weigh on a lot of the operators' 15 conscience a lot. A couple of them broke down into 16 tears, especially when seeing -- I'm not sure if 17 you've seen all the video with this case, but seeing 18 Kerry Kubla shot multiple times, his arm mangled, 19 that does take a huge toll out on -- those guys, you 20 know, are all, for the most part, like best friends.</p> <p>21 You know, they train together 24/7. They go out on 22 callouts all the time together. And to see one of 23 your friends on the verge of death after, you know, 24 doing your job is not something anybody wants to 25 see. So it does weigh on those guys a lot.</p>	<p>71</p> <p>1 for your threat assessment and your Graham versus 2 Connor questions. But essentially why did you make 3 the decision to utilize deadly force?</p> <p>4 Q. And in terms of Melanie O'Daniel's 5 case -- now, obviously she wasn't actually on the 6 stack. She wasn't involved in the shooting?</p> <p>7 A. Correct. She had COVID at the time.</p> <p>8 Q. Well, even if she hadn't had COVID, my 9 understanding is that --</p> <p>10 A. The tactical commander.</p> <p>11 Q. Right. So she's not involved in ever 12 executing these warrants?</p> <p>13 A. Correct.</p> <p>14 Q. She came with a lot of stats to her 15 interview. Did that surprise you?</p> <p>16 A. Not at all. We've interviewed -- I've 17 personally been in interviews with Lieutenant 18 O'Daniel upwards of, I would say, probably ten times 19 in the time that she was there, because we do have 20 questions on every SWAT shooting of what the 21 planning was and why the planning was the way it was 22 constructed. So a lot of times that tactical 23 commander has to be brought in either as a subject 24 or as a witness to determine that investigation's 25 tactical planning.</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

1 Q. In your experience as a CIRT
 2 investigator, were there any other -- were there any
 3 other cases where you came to the conclusion --
 4 sorry. I know you're not the one coming to the
 5 conclusion, so let me rephrase that. Strike that.
 6 In your work as a detective, CIRT
 7 investigator, were there any other reports that you
 8 have drafted where the conclusion came that they
 9 needed to revamp LVMPD policies, whether it had to
 10 do with "knock and announce" or search warrants?
 11 A. Not in my time, no. I believe there was
 12 a case before I was up there where they did
 13 recommendations. And if you look in my report, it's
 14 Section 9. And those are associated with whatever
 15 section it is.
 16 So if you're talking about preplanning,
 17 which is Section 3, there were a lot of
 18 recommendations that were associated with those that
 19 were voted on in a TRB, which I believe most of them
 20 got approved. And they actually got implemented,
 21 which was good to see. When we had different
 22 leadership take over, those were implemented very
 23 quickly.
 24 And that's the purpose of CIRT. And
 25 what a lot of officers don't understand is we're not

74

1 Q. And in terms of -- you said a little bit
 2 earlier -- we'll talk about it more in depth as
 3 we -- when we step back into the actual report.
 4 Is it my understanding -- because you
 5 talked about it briefly, the implementation of the
 6 recommendations.
 7 My question is, if they are accepted,
 8 then you are aware whether or not they're
 9 implemented; is that correct?
 10 A. So that's where OIO comes into play.
 11 So they'll take those recommendations, and they
 12 will draft a formal, I guess, workup of that
 13 recommendation. That does come through our
 14 shop. We have a form we file for these
 15 recommendations now, after this case specifically,
 16 that when those recommendations are put into place,
 17 that they make sure they follow up with those
 18 specific sections.
 19 Now, if it's patrol, it's a lot easier,
 20 because that's a global aspect. When we are talking
 21 about specialized units such as SWAT, then we have
 22 to make those adjustments with that deputy chief who
 23 is in charge of SWAT, and then the tactical
 24 commander and the captain of the section.
 25 Q. And so if I -- do I understand

76

1 trying to necessarily get you in trouble. We have
 2 to ask the tough questions to make the department
 3 better and to avoid officer-involved shootings.
 4 If we had -- if we had a year where we
 5 had zero officer-involved shootings and I was just
 6 bored in my office, I did my job extremely well. I
 7 would be very less stress-free because I
 8 know that -- and sometimes obviously you can't
 9 control those scenarios, but at least we're limiting
 10 our resources or limiting our --
 11 Q. And so, Justin, I want to ask you about
 12 that a little bit more. I want you to expand on
 13 that. Because one of the questions I was going to
 14 ask you was what is the purpose of CIRT. And so you
 15 kind of, like, briefly described it right then.
 16 Can you really, kind of with a little
 17 bit more detail, explain to me specifically, what is
 18 the purpose of this division?
 19 A. To analyze training, to analyze events
 20 that happened, and determine if our current
 21 practices are viable and current and practical and
 22 reasonable. And if there are any deficiencies
 23 noted, make those corrections to make our department
 24 a better agency and a safer agency for both the
 25 department and the community.

75

1 correctly, even how it's related to IOI has changed
 2 as a result of this incident?
 3 A. OIO?
 4 Q. OIO. Sorry.
 5 A. Yes. We have done a -- well, I can't
 6 speak very much on their side of it. While they are
 7 in the same office, just on the other side, I don't
 8 really pay too much attention to what they do.
 9 If they ask me, Hey, I need your
 10 recommendations on this, I need to put this into
 11 wording, and then how would you like to handle it?
 12 then yes, I'll send it over to them, if they have
 13 any questions about it.
 14 But I believe when this came out and we
 15 had I want to say it's 12 recommendations or
 16 something like that, I don't know the exact number
 17 off the top of my head, it was a lot more than we've
 18 ever had previously to where something could just be
 19 changed, like a policy or procedure. We've revamped
 20 our system. So nine of them. So it went up to 9.9.
 21 We also have to look at ourselves too.
 22 Again, it's Critical Incident Review Team, but
 23 it's -- we still work for LVMPD. And if we can be
 24 more efficient and we can help the department in a
 25 greater way, then doing stuff like recommendations

77

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>78</p> <p>1 in this manner where the board is voting on them and 2 it's just not our section saying, Hey, this needs to 3 change and here's why, now you have a tactical 4 review board full with an assistant sheriff, a 5 deputy chief, a captain of training, and then peer 6 officers and supervisors who are saying, Yes, we 7 should do this based on what we saw in this case.</p> <p>8 Q. And so -- and I know that the 9 recommendations are kind of laced throughout here. 10 Is it fair -- and my understanding having reviewed 11 this, but if there's another specific section 12 perhaps I missed -- the recommendations are laced 13 throughout the conclusions; correct?</p> <p>14 A. "Laced" is --</p> <p>15 Q. Well, how would --</p> <p>16 A. Included, I would say. They're not 17 hidden.</p> <p>18 After every conclusion, where usually it 19 will read certain SMEs conclude that, whether it's 20 reasonable, not reasonable, within department 21 standards, or policy failure, at the end of those 22 conclusions, before moving on to the next 23 conclusion, there will be a notation.</p> <p>24 I'll find one just for example. 25 On page 208, this is dealing with</p>	<p>80</p> <p>1 Q. Okay. I guess -- so that's what I was 2 trying to kind of figure out, the interplay in the 3 report.</p> <p>4 So it's throughout the dialogue of the 5 report, and then it's also there's 6 recommendations -- not every conclusion has a 7 recommendation?</p> <p>8 A. Correct. And that's done at the back of 9 those conclusions too for continuity, so you know 10 exactly what we're referencing when we talk about 11 that recommendation.</p> <p>12 Q. Okay. Okay.</p> <p>13 A. And, again, to speak on the point of 14 what does CIRT do, that's part of our goal is to 15 make the department better. So if those nine things 16 are implemented, we feel that that would make the 17 department better.</p> <p>18 And to my knowledge I believe most of 19 them, if not all of them, were done.</p> <p>20 Q. Okay. You said that it took you almost 21 a year to compile this report.</p> <p>22 Are there any -- other than trying to 23 get the -- which sounds like it's kind of a -- it's 24 more of a goal than a hard deadline -- to get the 25 officers involved interviewed as soon as possible,</p>
<p>79</p> <p>1 approval of the IAPs, just for an example. After 2 the conclusion was listed, there is a paragraph 3 afterwards that reads: Currently, there is no 4 approval form associated with the approval of search 5 warrants or the tactics utilized. All requests for 6 tools, et cetera, of Sierras -- all requests for 7 tools and tactics, Sierras -- which are SWAT 8 snipers -- Stun Sticks, 9-Bang, Explosive Breach, 9 CET, and SACO -- which is "surround and callout" -- 10 et cetera, can be completed verbally or even via 11 text messages, as was the case in this incident. 12 CIRT recommends that LVMPD create an official 13 approval form for the service of a SWAT search 14 warrant -- it goes on with a conclusion.</p> <p>15 So that's where we identify a verbal 16 affirmation of, yes, I want to -- I want all these 17 tactics, or through a text message, or whatever the 18 case may be, email. We thought it was not 19 sufficient enough to have that. It should be a form 20 saying, yes, check box, check box, here's a 21 signature, and go forward with your operation. That 22 was our recommendation on that one.</p> <p>23 Which, again, is a conclusion number on 24 the back of that table, which is then voted on the 25 board at the TRB.</p>	<p>81</p> <p>1 are there any other, like, internal deadlines that 2 you're supposed to meet when preparing these 3 reports, or preparing this report?</p> <p>4 A. There's deadlines that are set based on 5 the availability of staff. If you were giving an 6 initial sheriff brief, for example, it's set at X 7 date, usually a week after the FIT presentation. In 8 this case it was probably two weeks just because 9 they knew that we had five involved officers that we 10 had to interview. So that is something that's set 11 case-to-case basis as far as that meeting or -- that 12 meeting, that presentation.</p> <p>13 However, you also then have then a date 14 set for your captain's/lieutenant's brief, which is 15 more along the lines of a global -- like, how can we 16 fix this globally.</p> <p>17 In this case we didn't do a 18 captain's/lieutenant's brief because it was a SWAT 19 operation, and that's not something that needs to be 20 fixed on a patrol level, and that's the purpose of 21 that one.</p> <p>22 And then the SME brief, usually we try 23 to get that done in a reasonable amount of time, 24 after all interviews are completed, to get the 25 officers back to work who are able to go back to</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 work that are cleared by doctors at that point. 2 So once the SME brief happens, then 3 those officers can be cleared if they've been 4 cleared and properly trained for the return-to-duty 5 training. 6 Q. Okay. And we talked about it a little 7 bit more briefly. I want to kind of go through -- 8 based on what you testified to here today, I want to 9 go through what I think your investigation process 10 can -- like, has, and you tell me if I've left 11 anything out or if this is accurate. 12 A. Okay. 13 Q. So there's the initial callout; correct? 14 A. Correct. 15 Q. And that's when you would actually go to 16 the scene of the officer-involved shooting? 17 A. Correct. And that's -- just to kind of 18 piggyback on that, it's the callout team. 19 So the sergeant and lieutenant on an OIS 20 will always go out, unless they're out of town. 21 Obviously if they're in California, they can't come 22 back. And then the callout team. 23 The next up for a case has the option to 24 respond but is not necessary. Again, if you have 25 family things and it's 3:00 in the morning and</p>	<p>82</p> <p>1 impaired via breath. 2 After that's done, we have a call out to 3 a guy who comes out and does the urine test, usually 4 on one of the union buses. That is a third-party 5 system. And that's sent off to testing. I can't 6 speak too much on the fact that he just comes out 7 and collects urine. That's all I know from that. I 8 don't know where it goes from that point. 9 Then we get a briefing from the 10 investigator in charge of that. Usually it's a 11 sergeant or a PD detective who is just out there. 12 They compile everything they know at the time to 13 give a brief of who's involved and why we're out 14 there. 15 Once that brief is completed, we 16 determine who our involved officers are and who our 17 witness officers are, people who just saw the event, 18 and we admonish them. The admonishment is 19 essentially, Don't discuss this, for anticipated 20 testimony purposes, with each other. 21 Once we admonish them, we note that on a 22 piece of paper. We have a piece of paper that has 23 the names and it has the admonishment. So we read 24 it to them. We have them either sign it, or, if 25 they're not available to sign it -- like in this</p> <p>84</p>
<p>1 you're not available, you're not available. 2 Once that happens, then we go to your 3 next part. So it's a -- it's a very fluid dynamic 4 based on the amount of people we have because we 5 don't have a lot of people. 6 Q. Okay. So let's talk about -- like, you 7 know, I'll be asking, I guess, in a hypothetical, 8 but it really is geared towards this. 9 So there's the callout, which you didn't 10 go to? 11 A. Correct. 12 Q. Okay. And then from there -- sorry. 13 Let me backtrack. 14 What -- what do you guys do at the 15 callout? And what is -- what does a CIRT 16 investigator such -- a CIRT detective investigator 17 such as yourself, what would you do at the callout? 18 A. So at the callout we are required by 19 state law to do breath and urine on all involved 20 officers. So the first thing we do is we go into 21 whatever respective area the officers are being 22 held, whether it be one of the buses from the 23 unions, a patrol vehicle if they're not part of a 24 union, and we utilize our PBT that's assigned to us, 25 our preliminary breath test, to determine if they're</p>	<p>83</p> <p>1 case Kerry Kubla got shot in both his arms. He 2 can't sign that. And he was at the hospital. We 3 ended up calling him on the phone, once he was out 4 of surgery and he was coherent, and just admonished 5 him over the phone, wrote his name down, and marked 6 the time that he was admonished. 7 After that is done, we'll go through all 8 body-worn camera in the TOC, which is the tactical 9 operations center. It's a big RV-looking thing that 10 has a bunch of TVs and computers so we can load up 11 those cameras and watch them in real time. 12 At this time FIT is also conducting 13 their investigation. They're the leads of the 14 investigation. We're just -- we are background. 15 FIT is doing interviews with all witness 16 officers. And then they will do the countdown of 17 the officers' weapons and the walk-throughs with the 18 officer and their representation. We're not there 19 for any of that. 20 So once we get the video, we see 21 everything that happens, we wait for our four 22 involved citizens. So we have our citizen review 23 board that comes out that's part of the use-of-force 24 board that votes on it. They come out there that 25 night, and they get a walk-through of the scene</p> <p>85</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

86	<p>1 outside of the red tape. So they're not permitted 2 to walk inside the scene, but they get as close as 3 possible, and they get the details that we know at 4 the time of the incident.</p> <p>5 This is usually done by the CIRT 6 sergeant or lieutenant. In some cases the senior 7 detective on the squad who was out there will have 8 to do it, based on availability. But we just give 9 them an overview of, like, this is why we are out 10 here. We had five officers fire. And this is the 11 apartment. Do you guys have any questions?</p> <p>12 And a lot of it is preliminary 13 questions. A lot of it is stuff we don't know, if 14 they ask any questions.</p> <p>15 And then we try to keep those same 16 individuals in the use-of-force board. Sometimes 17 from availability that's not possible. That's why 18 we have citizens who are on, like, reserve that can 19 fill in if the citizens available is not there.</p> <p>20 But that concludes pretty much our 21 investigation, outside of making our IA Pro case, 22 which is done back at the office or on a laptop on 23 the scene, and making our H drive file, which is 24 just our generic case file. And then we start 25 loading up things like CAD, which is computer-aided</p>	88
87	<p>1 dispatch.</p> <p>2 By that point, usually body-worn cameras 3 aren't available yet because they have to download 4 and then be available on evidence.com, which doesn't 5 happen until FIT gets back in the office and puts 6 their cameras on the dock, and usually it's a couple 7 of hours after that.</p> <p>8 Q. When you say you have to make the IA Pro 9 case, what do you mean by that?</p> <p>10 A. Essentially it's the virtual case file 11 in our systems which any -- essentially, FIT -- not 12 FIT, sorry -- any CIRT or IA investigation just 13 documents anybody's involvement in any of those.</p> <p>14 Q. And I saw some -- I've seen throughout 15 the case file there are photos where it kind of 16 recreates -- some of it you -- some of it is 17 referenced in some of your report, where it talks 18 about, like, this person was standing this far from 19 the couch and was located here.</p> <p>20 Is it FIT that kind of does all that?</p> <p>21 A. No. So that's our crime scene analysts 22 that do that.</p> <p>23 So there's twofold to that. I believe 24 in this case was one of the first cases I used 25 TruView on, which is the kind of grainy-looking</p>	89

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 In this case -- I'll use an example of 2 something that we would put on a notice that would 3 be a negative would be, when we were watching Kerry 4 Kubla's body-worn camera, after he got shot, he goes 5 to the ground. Obviously his camera stays on. They 6 ended up turning it off. But at the time they were 7 unaware if he fired or not.</p> <p>8 We have the video evidence that shows 9 that he does and his round count showed that he did. 10 But during the course of the investigation, it was 11 determined that one of the SWAT operators cleared 12 his weapon because it was dangling unsafe from his 13 body as they were trying to tend to his wounds, 14 which per policy you're not supposed to do.</p> <p>15 Now, this is one of those things where 16 we talked to SMEs later on and say, Hey, was this 17 reasonable given the circumstances of Kerry being 18 shot? And they determined it was just because they 19 wanted to get that gun out of play, and they weren't 20 necessarily sure if he shot.</p> <p>21 But that would be something we'd look 22 for on a notice to where now, up top of the subject 23 notice that we would have to give these officers, if 24 we see any allegations of misconduct, not 25 necessarily saying that there's something wrong with</p>	<p>90</p> <p>1 their statements in a short enough time period to 2 where we're not sitting there all day reading their 3 exact transcription, and then preparing for that 4 presentation.</p> <p>5 Once that's done, then I'm assuming your 6 question is after --</p> <p>7 Q. And sorry. Just -- I'm going to 8 interrupt you just for a second.</p> <p>9 A. Yeah.</p> <p>10 Q. Is that the 12-hour presentation with 11 the slideshow?</p> <p>12 A. No.</p> <p>13 Q. Okay. Sorry. Keep going.</p> <p>14 A. We have multiple presentations as part 15 of CIRT investigations. But this is the initial 16 brief. I want to say this one probably was around 17 45 minutes to an hour.</p> <p>18 Q. If you remember, or not, at that point 19 in time were you aware that there were issues with, 20 like, the search warrant and the IAP? Were you 21 aware of any of that?</p> <p>22 A. Yes. So we get all those documents from 23 SWAT at that time, and we start putting together an 24 investigation.</p> <p>25 But, again, this is a preliminary</p>
<p>1 it, but we identified it as possibly being an issue, 2 and we need to talk to you about it, but we can't do 3 so without putting it into the notice for NRS.</p> <p>4 So in this case we would have -- I 5 forget who the officer was that did that. But in 6 his notice it would read, You were the witness to 7 this. However, you're a subject, and here's your 8 allegation of misconduct.</p> <p>9 So that's kind of where we would go at 10 that point would be the involved officers' body-worn 11 cameras, and kind of breaking down all of that to 12 see if there was any allegations of misconduct 13 within those individuals outside of accusing them of 14 being in an officer-involved shooting, which is why 15 they're required to talk to us in the first place.</p> <p>16 Q. So then you get through the initial -- 17 you get through the initial interviews, which I 18 think happened in about the first week and a half. 19 And then what are you doing next?</p> <p>20 A. Preparing for the sheriff brief, the 21 initial sheriff. Preparing for that brief. Getting 22 the threat assessment done for each of those 23 officers, and the Graham versus Connor, which are a 24 lot of -- very tenuous. Because you have to go back 25 and listen to the interview, you have to surmise</p>	<p>91</p> <p>1 investigation, where we are on the investigation 2 itself. A lot of that tactics and paperwork stuff 3 comes after.</p> <p>4 The first thing that we want to -- that 5 we're required to do as CIRT is advise staff on the 6 shooters in this case and what were their responses 7 to the questions that were asked about their use of 8 deadly force.</p> <p>9 In previous years, and this has not 10 happened in, I want to say, five years, we did 11 30-day updates. I believe we did a 45-day update on 12 this one, which was just going into a lot of the 13 stuff that we were finding from the investigation 14 that you see in the report, just to update staff. 15 But initially we mentioned it as areas of concern, 16 but we hadn't fully investigated it.</p> <p>17 So it's one of those things where you 18 mention, Hey, this is what we identified, but we're 19 still looking into it. We haven't interviewed the 20 people, so we can't give the reasons why this was 21 done this way or that way.</p> <p>22 But that's why we do the initial --</p> <p>23 Q. Is it fair to say that there were early 24 areas of concern in this case?</p> <p>25 A. In every case there's always areas of</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 concern. No OIS is perfect. On the surface it 2 could look like the absolute cleanest, and there's 3 always one minute factor -- body-worn camera, 4 someone is missing a piece of gear that's 5 nonessential -- there's always some little detail. 6 So that's our job, to make sure we find 7 those little details. Because if we don't find 8 those little details in the case, then it never gets 9 fixed.</p> <p>10 Q. And I'm sorry if you said this before. 11 I just want to backtrack and ask again. 12 Did this have more recommendations than 13 any other case you'd ever worked on?</p> <p>14 A. Yes.</p> <p>15 Q. And they were further implemented as -- 16 it not only had the most recommendations, but there 17 was the most implementations of the recommendations; 18 correct? To your knowledge.</p> <p>19 A. I can't speak on that one way or the 20 other as far as the eight years or seven years 21 previous to CIRT.</p> <p>22 Q. I'm sorry. I'm just talking about in 23 your experience.</p> <p>24 A. In my experience, yes.</p> <p>25 Q. Okay. And that's a fair distinction.</p>	<p>94</p> <p>1 where we make a determination of where we need to go 2 next. 3 In this case I believe Lieutenant 4 O'Daniel was one of those key figures. Sergeant 5 Findley. Officer Jake Warner because he was the 6 ATL, the assistant team leader. Those are some 7 individuals that we would want to interview before 8 we get to somebody else who may not have as deep of 9 involvement.</p> <p>10 But we're in the planning structure of 11 this and kind of work backwards from the shooting to 12 the planning to how do we operate as a department. 13 So it's kind of working backwards from the time of 14 the incident.</p> <p>15 Q. Okay. And you had mentioned this 16 before, and I just wanted to ask you about this 17 since you brought it up. You know, that CIRT -- 18 one of the reasons that you were assigned this 19 case -- or, sorry, you volunteered for this case was 20 because you had a lot of experience with search 21 warrants.</p> <p>22 And so can you kind of -- and you told 23 me, like, in what areas or departments you had the 24 experience in. But can you tell me about, like, 25 what is your -- like, were you drafting -- like,</p>	<p>96</p> <p>1 when you say a lot of experience with search 2 warrants, can you explain that to me a little bit 3 more in terms of the actual mechanics of what you 4 were doing?</p> <p>5 A. Sure. The affiant of the legal document 6 that is the search warrant, and then also being the 7 secondary on a lot of cases where you're required to 8 sign as the secondary on that affiant page. 9 But, yes, authoring and being the 10 affiant of search warrants.</p> <p>11 Q. Did you have a lot of experience in your 12 prior professional background for Las -- in 13 executing search warrants?</p> <p>14 A. As being an operator in SWAT, zero. 15 I've never been in SWAT.</p> <p>16 Q. Okay. But even -- sorry -- outside of 17 SWAT, did you ever execute search warrants as part 18 of your role in any of the other --</p> <p>19 A. No. So the -- back in, I believe it 20 was, 2012 or '13, we stopped the practice of having 21 detectives serve their own search warrant if there 22 was minimum danger. Any search warrant that needed 23 to be -- needed to be served on a dwelling or any 24 kind of structure that was not frozen -- and frozen 25 in this aspect of having police officers inside and</p>
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Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 it being completely secured -- would be then 2 conducted by SWAT.</p> <p>3 Q. So I guess can you explain that to me 4 a little bit more? Because I saw some 5 conversation about why wasn't Major Violators 6 involved. So does Major Violators serve those, or 7 is it just SWAT?</p> <p>8 A. No. I guess maybe -- was that from my 9 testimony you're discussing?</p> <p>10 Q. It was within the report somewhere, a 11 discussion about Major Violators, in terms of them 12 executing the search warrant, and were they 13 considered or not.</p> <p>14 A. So that was not necessarily the 15 execution of the search warrant. That would be 16 conducting the arrest of the individual.</p> <p>17 So a lot of times Major Violators will 18 be tasked with getting search warrants or the body 19 for a search warrant, to include, like, an arrest 20 affidavit as well. And then once they have that 21 probable cause and have that signed warrant for 22 arrest and search warrant, then they would go find 23 that person, whether it be through electronic 24 resources or visual resources as far as, like, 25 stakeouts, I guess would be, like, the layman's term</p>	<p>98</p> <p>1 Q. So I guess let me ask the question a 2 little bit differently.</p> <p>3 For instance, I don't see Mr. Bandiero 4 on this list.</p> <p>5 A. Correct.</p> <p>6 Q. He's a subject matter expert; right?</p> <p>7 A. Again, yes.</p> <p>8 Q. So why isn't he listed on here?</p> <p>9 A. I couldn't tell you one way or the other 10 as far as our procedural goes. But from my 11 understanding is that that is our baseline 12 essential. Those are our everyday SMEs that conduct 13 training, tactics throughout AOST, RBT, the academy.</p> <p>14 Anything else that's mentioned as an SME 15 as far as specifics, like Anthony Bandiero on there, 16 would be mentioned as an SME in the report, but it 17 wouldn't be in that sidebar. If we got to the 18 point, especially on this case, there wouldn't be, 19 one, enough room for it. But, two, it's a internal 20 briefing that's not made to be -- most SME briefs 21 are not made to be on the record. It is to assist 22 the investigating detective with the guidance on 23 tactics and training, what we do.</p> <p>24 Q. So are there any SMEs -- if they're not 25 meant to be on -- okay -- sorry --</p>
<p>99</p> <p>1 for it. And they would try to apprehend that 2 individual outside of the house as opposed to inside 3 the house.</p> <p>4 If it had ever gone to an 5 inside-the-house, where they were either barricaded 6 or refuse to come out, always SWAT. Major Violators 7 would never serve a search warrant.</p> <p>8 Q. Okay. Thank you for explaining that.</p> <p>9 And where in the report -- we'll get 10 back to the thing -- what your next steps are.</p> <p>11 Where in the report would I find -- is 12 there, like, a listing of subject matter experts?</p> <p>13 A. The standard subject matter experts are 14 going to be on that page 1 that you gave me. It's 15 this -- I think I have your page now. You have it 16 there too?</p> <p>17 The -- I can't remember if we started 18 implementing a sign-in list after this case, because 19 there was a little bit of controversy during the 20 use-of-force board where Lieutenant O'Daniel 21 attempted to have TJ Jenkins be her representative, 22 and he was one of the SMEs that was used for SWAT.</p> <p>23 In general we don't put the specialized 24 units out of there onto that list. Those were our 25 general people that were there for training.</p>	<p>99</p> <p>1 A. There should be a sign-in list that was 2 in our case file of SMEs for the SWAT side and the 3 search warrant side. Which is how we knew that 4 TJ Jenkins was an SME and how we could prove it, why 5 he was not allowed to represent Melanie O'Daniel 6 during the use-of-force board.</p> <p>7 Q. Related to this case or related to a 8 different case?</p> <p>9 A. Related to this case. She tried to have 10 him as an SME -- not an SME, sorry. As a 11 representative.</p> <p>12 Q. But he was an SME on this case?</p> <p>13 A. Correct. So we did not allow that.</p> <p>14 Q. And what does Mr. Jenkins do?</p> <p>15 A. He was a SWAT sergeant. He is now 16 retired.</p> <p>17 Q. So when you say "represent," I guess I 18 just always assume lawyer.</p> <p>19 How can a SWAT sergeant represent 20 somebody?</p> <p>21 A. Per NRS you are allotted two 22 representatives of your choosing. It does not have 23 to be anybody. I can be a representative of 24 somebody. If I were to leave CIRT -- obviously it 25 would be a conflict of interest if I did it now.</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 But if I were to leave CIRT and be just a regular 2 patrol officer, and somebody would like me to 3 represent them at the use-of-force board or in an 4 interview, they could pick me. It does not matter 5 who they pick. Most of the times it's union 6 representatives. Very seldom is it a lawyer. David 7 Rogers sometimes comes in on cases. Dan Ko, who is 8 a lawyer, but he was also a lieutenant, is a PMSA 9 representative who comes in from time to time with 10 people who are represented by the PMSA. 11 But for the most part, the officers are 12 represented by members of the LVPPA and the PMSA and 13 PPACE, which I don't know the acronym for, I'm 14 sorry, but it's the civilian union, if there's, 15 like, dispatchers or call-takers that need to be 16 represented during use-of-force boards. But those 17 are all officers, detectives, sergeants, 18 lieutenants. 19 Q. I'm trying to authenticate the content 20 of the report in terms of the use of the SMEs. 21 So not -- the SMEs, you know, the 22 outside experts, they're not listed on this front 23 page? Like Mr. Bandiero, they are not listed on the 24 front page? 25 A. Correct.</p>	<p>102</p> <p>1 been concluded. 2 In this case, I think we did a couple 3 afterwards because of orders from executive staff. 4 Q. Sorry. What do you mean by "a couple"? 5 A couple of interviews or a couple of updates? 6 A. Correct. A couple of interviews after 7 the SME briefs. In general we try to get everyone 8 done prior to that. It doesn't happen every single 9 time. But for the most part, we try to get 10 everybody involved. 11 In this case, because there was such a 12 wide net of people that we needed to interview and 13 time and resources, I don't believe we got in 14 everybody. In fact, I know we got -- we interviewed 15 Melanie O'Daniel, and then we had to re-interview 16 her based on information we learned later on. 17 Q. Okay. And so the SME briefing is 18 something different. That's kind of midway point 19 through; is that correct? 20 A. Midway is a fair way to say it. 21 Q. Okay. 22 A. It's just another check in the steps it 23 takes to finish one of these reports. 24 Q. And then after they have the briefing, 25 you talked about several meetings with Mr. Bandiero.</p>
<p>1 Q. If you relied on them specifically, 2 you're going to include that notation within the 3 report. Is that fair to say? 4 A. Fair. 5 Q. Okay. And we went over that one part 6 that should have been italicized. That was from 7 Mr. Bandiero's report. 8 But as we sit here today, that was from 9 his memo or whatever you want to call it? 10 A. Yes. From that meeting, the list of 11 meetings or the various meetings that we've had. 12 Q. And then it's actually the sign-in page 13 that's going to tell me exactly who the SMEs in 14 addition to the ones listed on the front page are? 15 A. Correct. 16 Q. And were they all present for that 17 12-hour slideshow presentation? 18 A. No. 19 Q. Okay. Were they present for the other, 20 like, updates? 21 A. No. 22 Q. Okay. 23 A. They're specifically brought in there as 24 they get a PowerPoint presentation of the facts that 25 we know and usually after all the interviews have</p>	<p>103</p> <p>1 So after you have that initial briefing, then are 2 you meeting with them again to see if they have any 3 comments or -- 4 A. They -- anybody who is an SME on the 5 department, which usually goes out to everybody on 6 that list on the side column, is given a report via 7 BlueTeam, which is one of our internal resources, to 8 review. If they have any issues with the report 9 itself, that will be notated. 10 In most cases there's nothing that is 11 said. I don't deal with that side of it. That's on 12 our executive staff side of it. I just get the, 13 Hey, this is their question. Can you answer it? 14 Q. Oh, okay. So you're not even part of 15 that meeting? 16 A. As far as the -- 17 Q. You just get, like, the follow-up; 18 like, Hey, they have questions about this, this, and 19 this? 20 A. When it comes down to sending out the 21 final report, there's no meeting. It's sent out. 22 They read it on their own, and then they send their 23 feedback. 24 Then I'm given the feedback, and I can 25 call them up or email them and say, Here are your</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>106</p> <p>1 concerns, and here's why this decision was made 2 based on this. If you have any questions, call me. 3 Q. Okay. So we're midway -- sorry. I keep 4 pulling you around. We're midway through. We're 5 at, like, the SME briefing. Then what happens from 6 there?</p> <p>7 A. You start writing the report. In this 8 case, 222 pages, a lot. So it took quite a lot of 9 time to, one, go through a structure of how I want 10 to present this. And most times we want to go 11 chronological order. And then what quotes you want 12 to use.</p> <p>13 Usually I just -- the way I operate is I 14 just kind of think of how I've done it in the past 15 and how I should mirror that and how it looks as far 16 as chronological. So I know I wanted to talk about 17 certain things first and then go into, you know, the 18 operational side of it last. And always last would 19 be officer-involved-shooting part because it's the 20 last thing that happened. Usually it becomes static 21 after that.</p> <p>22 Q. Okay. And so then is it fair for me to 23 assume that you have some level of -- you can -- you 24 have some level of autonomy in how you're going to 25 organize the report?</p>	<p>108</p> <p>1 justified, and it drove me crazy. It's not 2 something that messes with the content of the 3 report. But as trying to be as much of a 4 perfectionist as possible, as I was rereading this 5 recently, I saw that I had a paragraph that was not 6 justified, and it just absolutely drove me crazy. 7 But then it goes to our sergeant, our 8 lieutenant, and then our captain reads it. 9 Q. And so you said in this particular case 10 that it was the whole team that round-tabled this; 11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. Why did the whole team round-table 14 this one?</p> <p>15 A. Just from the complexity of it. Five 16 shooters, the IAP, the investigation itself. All 17 the aspects that make this a 222-page report is a 18 lot for one individual to compile that information 19 themselves. Especially when you're writing in your 20 own voice -- and I'm sure you've had similar 21 instances where you're writing in your own voice, 22 and sometimes, either when you're rereading your 23 stuff, you know what you were saying but you didn't 24 put it on paper correctly, or there might have been 25 a question on whether we're going to put both sides.</p>
<p>107</p> <p>1 A. There's a structure we like to follow. 2 I don't finish my report, then hand it to SMEs and 3 say, Hey, you guys good with this? 4 In this case we round-tabled it, went 5 through page by page with the entire squad. 6 But in general for an OIS, if my partner 7 gets an OIS, he gets done with his report, it goes 8 to me. I look at it for spelling, grammar, and then 9 also for content. 10 After I give him my corrections, then 11 that usually goes to one more detective to see if 12 that can -- I missed anything. Because -- sometimes 13 you read a lot of the same things over and over 14 again, sometimes you do miss things. 15 That is then double-checked by a second 16 detective. 17 It then goes to the sergeant of the 18 section and to one of our executive staff officers, 19 one of the civilians. And they look -- the 20 executive staff looks for -- civilians look for 21 grammar specifically, try to get it as dialed in as 22 possible as far as grammar and spelling. 23 We do miss things from time to time. I 24 was reading back in this, and I get very nit-picky 25 on things, and I noticed one of my paragraphs wasn't</p>	<p>109</p> <p>1 Like, if there was any kind of divide, to make sure 2 we put both sides of that into the investigation, 3 like the "knock and announce" that we did. 4 But in this case, because it was so 5 in-depth, because at the time I only had three years 6 on in the section, I was kind of middle of the road 7 when it came to seniority there, it was important 8 for the section to -- it's always important for the 9 section to get everything right and give the best 10 work product that we can. 11 So at this point our command staff -- 12 our sergeant, lieutenant, and captain -- thought it 13 would be prudent to go over it as a group and make 14 sure that we were all on the same page, as opposed 15 to handing a 222-page report to one detective and 16 wait and then to another detective and wait. 17 Q. You said this one was particularly 18 important. Why was this particularly important? 19 A. Did I say important? As far as it was 20 particularly important to get this done because of 21 the size of the investigation. Like we've discussed 22 previously, 222 pages is not our normal work 23 product. Usually it's between 60 and 80 pages. 24 There was a lot of deficiencies noted, 25 which were put in our recommendations, that we</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">110</p> <p>1 wanted to make sure that we were squared away on as 2 far as, when you're talking about that Section 9 of 3 our recommendations, we're changing the department. 4 We're trying to improve the department. And we're 5 making those recommendations to be voted on by a 6 tactical review board. So we want to make sure 7 they're articulated in a way that the reader and the 8 voting members would understand.</p> <p>9 Q. When you're recommending -- or when part 10 of the report, you know, the purpose is to change 11 the department, that assumes that things can be done 12 differently; correct?</p> <p>13 A. Yeah.</p> <p>14 Q. So if officers, when I deposed them, 15 made assertions that certain things couldn't be 16 done differently that you had recommended -- or 17 that CIRT had recommended changing, that would be 18 refuted by the fact that CIRT recommended a change; 19 correct?</p> <p>20 A. From a department standpoint, yes. 21 However, to the officer's defense, on either our 22 interviews or whatever -- I obviously don't have 23 access to your depositions of those individuals, 24 but they were operating on the information they had 25 at the time and the policy, tactics, and training</p>	<p style="text-align: right;">112</p> <p>1 If you were to put every different 2 section into our policy manual -- vice, narcotics, 3 SWAT, air unit, everybody -- CIRT -- the manual 4 would stack up to the roof.</p> <p>5 So essentially it's an extension of 6 policy with their own set of, I guess, tactics and 7 training that they utilize, whether it be from their 8 SWAT school or Major Violator school or whatever 9 they put on to train their individuals, if that 10 makes sense.</p> <p>11 Q. Yes.</p> <p>12 We talked about it quite a bit, but just 13 to clarify, in the initial part of your -- of the 14 CIRT report, you make a distinction between your 15 administrative review and the review for the 16 criminal review; correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And part of the administrative 19 review is to determine what we've all kind of talked 20 about globally and we're going to dig into more 21 specifically, the policies and procedures, the 22 training, and whether the officers acted reasonably 23 under those conditions; correct?</p> <p>24 A. Yes.</p> <p>25 Q. Which is different than an analysis of</p>
<p style="text-align: right;">111</p> <p>1 that they were given that was approved by our 2 department.</p> <p>3 What we're talking about as far as 4 making improvements or changing things is we saw 5 what happened, not necessarily good outcome or bad 6 outcome on this case or any other case, but how can 7 we make it so it is even better.</p> <p>8 Q. Well, I mean, you're saying "even 9 better," but there were conflicts within the 10 policies themselves; correct?</p> <p>11 A. Absolutely.</p> <p>12 Q. Okay.</p> <p>13 A. But not -- in the manual. Not the 14 policies. The manual. The department manual for 15 SWAT. Not policies.</p> <p>16 Q. What's the difference?</p> <p>17 A. One is a policy manual, and one is a 18 section manual.</p> <p>19 Q. What's the difference between a policy 20 manual and a section manual?</p> <p>21 A. Section manuals have to have -- they 22 can't violate policy, but they go into more detail 23 of what that section does. It would -- I'm not sure 24 if you've seen our policy manual, but it's about the 25 size of that binder, if not even bigger.</p>	<p style="text-align: right;">113</p> <p>1 whether or not they were justified in shooting; 2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. And one of the -- you tell me if I -- is 5 it correct that one of the parameters of 6 reasonableness is that it still must be within the 7 Constitution, their actions must be within outlines 8 of the Constitution and how they have to do 9 different --</p> <p>10 A. So, again, we don't deal with -- I'm not 11 a lawyer, so I can't speak on constitutional law. 12 What I can speak on is to the set of 13 NRS and -- or supreme court decisions of Graham 14 versus Connor that fit into what we investigate. 15 We look at specifically Graham versus 16 Connor. That is the legal binding for use of deadly 17 force specifically.</p> <p>18 Then we have our threat assessment 19 of the ability, opportunity, imminent jeopardy, 20 and preclusion that we analyze our uses of force on.</p> <p>21 Q. Sorry. Thank you for clarifying that. 22 But I am talking -- and so -- but in 23 terms of, like, the Fourth Amendment, search 24 and seizure, people's individual rights under 25 the Fourth Amendment, that the reasonableness of</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">114</p> <p>1 an officer is still -- no matter whether or not 2 they seem reasonable, certain actions must fall 3 within the parameters of the case law and what the 4 supreme court has said officers must comply with 5 in order to recognize people's Fourth Amendment 6 rights; correct?</p> <p>7 A. If you're speaking of the Fourth 8 Amendment rights of that -- that use of deadly force 9 is what you're speaking to?</p> <p>10 Q. Yes.</p> <p>11 A. Then yes.</p> <p>12 Q. Okay. And so we've talked a little bit 13 about -- and so, okay. Sorry. I'm going to loop 14 back, and then we'll go forward.</p> <p>15 In terms of the investigation, you 16 issued the final CIRT report; correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. In this case it's been 19 round-tabled; everyone's looked it over; it gets put 20 out.</p> <p>21 Then did you get any questions back 22 about this report?</p> <p>23 A. I don't recall how many questions, if I 24 got any, on this case from anybody who saw the final 25 product. I don't recall.</p>	<p style="text-align: right;">116</p> <p>1 of the department because everything that we do is a 2 legal document. When it comes -- when we talk about 3 a traffic citation, that's a legal document. I 4 don't want spelling errors or grammatical errors on 5 the back of a citation of why I gave this individual 6 a citation.</p> <p>7 The same thing goes for an arrest report 8 or even when you deal with something as detailed as 9 a CIRT report. There's still that aspect of not 10 turning in a sloppy product and having pride in your 11 work, because you should have, as an officer in this 12 department -- I'm not saying it happens with 13 everybody. But for me, since I've been a member of 14 this department for 16 years, I pride myself on the 15 fact that I can write well enough to get into a unit 16 like this to where my input is valued.</p> <p>17 Q. Do you think that the primary -- do you 18 think your primary role is as a writer?</p> <p>19 A. Well, I mean, primary role is a Swiss 20 Army knife. You can't really point to one aspect of 21 my thing, this is what you do, you are a presenter, 22 you are a writer.</p> <p>23 There's definitely an aspect of it that, 24 yes, you have to be able to clearly articulate 25 whatever you are trying to convey in the report to</p>
<p style="text-align: right;">115</p> <p>1 Q. Were there drafts going out the whole 2 time?</p> <p>3 A. There's not drafts going out. We 4 never send out a draft of the report until it's 5 final. Once it's finalized, then it would be 6 sent out.</p> <p>7 However, the team has access to all the 8 drafts. So as we're doing this report, if I get to 9 a certain section, Hey, how does this sound? Can we 10 round-table this? Or, Hey, can I get an opinion on 11 how I wrote this? Then the team has access to those 12 drafts.</p> <p>13 But never a draft, like, unfinished 14 version of this has ever gone out to anybody outside 15 of our unit.</p> <p>16 Q. Okay. And I understand -- you seem to 17 be an individual, Justin, that takes pride in their 18 work. Is there -- but it seems like there has been 19 a lot -- based on what you've told me, there's been 20 a lot of focus within the CIRT unit.</p> <p>21 Why is it -- why is there such a focus 22 on the way it's drafted, to make sure that there are 23 no typo errors, to have, like, this level of review?</p> <p>24 Why is that important for the department?</p> <p>25 A. I think it's important in every aspect</p>	<p style="text-align: right;">117</p> <p>1 where it is, one, able to be read by somebody who's 2 not a department member. That's very important, 3 because civilians are reading this from a 4 use-of-force level because they're voting on it to 5 determine if it's a reasonable use of force. So you 6 have to write in almost a simpler version, but also 7 have to write it in a way that lays out all of our 8 department policies and tactics and training and be 9 able to cite those correctly. And also interpret 10 the investigation and utilize the quotes inside of 11 it properly.</p> <p>12 Q. Other than your prior kind of come-up 13 experience and your come-up experience through the 14 department and your communications degree, have you 15 had any other training offered through LVMPD or 16 through CIRT about writing?</p> <p>17 A. I know there's been report-writing 18 classes I've taken. But, I mean, we're talking over 19 a span of 16 years. There's no specific CIRT, like, 20 writing classes. That's something that's learned 21 over time as far how to write. We try not to use 22 the word "that" and "there." That's one of the 23 specifications I mentioned, the justification on the 24 reports.</p> <p>25 When I see anything that's not justified</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 in any aspect of my life anymore, it triggers me a 2 bit to like, I need that justified. But just 3 overall the sentence structure. 4 I can see where I was at this point 5 three years in my career when I read this and I go, 6 I probably would have done something grammatically 7 different there -- grammatically. See. I even 8 messed up that. 9 But it's all about growing. And a 10 one-year CIRT detective writing a report is not 11 going to look like my report now being there six 12 years and a senior detective on the unit. 13 MS. MURPHY: Do you want to take another 14 break? 15 THE VIDEOGRAPHER: Off the record at 16 11:37 a.m. 17 (A break was taken.) 18 THE VIDEOGRAPHER: On the record at 19 11:47 a.m. 20 BY MS. MURPHY: 21 Q. Justin, I'm just going to ask you some 22 more basic background questions about the report, 23 and then we're going to get into the content of the 24 report itself. Okay? 25 A. Okay.</p>	<p>118</p> <p>1 A. To identify things that we're doing 2 right and to just complete a full administrative 3 investigation to see -- again, I mean, yes, there 4 are going to be some deficiencies noted, but there 5 are also going to be a lot of positives that come 6 from this, where you see that things are working; 7 that training is working; that if things are done 8 correctly within training and policy and tactics, 9 that those are done for a reason, and those do end 10 up mostly in successful officer-involved shootings. 11 Q. I didn't see -- I mean, in terms of the 12 administrative aspect, not in terms of the criminal 13 aspect, I didn't really note any things where you 14 guys were saying this was done right in here. 15 I mean, can you point me out to parts of 16 the report where you were saying this was done 17 correctly? 18 A. Any time there is a conclusion in there 19 that does not say that it was within -- that was 20 within LVMPD policy and tactics -- any of the 21 conclusions that are inside of the report that say 22 that they were within department policy, training, 23 and tactics are considered good. 24 Again, that's just from a personal 25 standard, from me saying good. We're not saying,</p>
<p>1 Q. Okay. Based on what you've just told 2 me, it is your understanding that this report's 3 going to be widely circulated; is that correct? 4 A. Widely circulated how? 5 Q. Well, that it's going to be seen by 6 civilians. That this is considered a legal 7 document. This is not like an internal report 8 that's only seen by CIRT or only within, like, a few 9 branches of LVMPD; is that correct? 10 A. No. So this is an internal report. 11 This is not a published report like a FIT report. 12 Any FIT report -- and to my knowledge, 13 you can look up online and Google it and it's on 14 there. 15 But for purposes -- when I say that 16 civilians are going to read this, those are going to 17 be the civilians that are going to be voting on the 18 use-of-force board. So those four civilians. 19 It's not available department-wide. 20 It's not available to anybody who wants to read it. 21 It is a very secure document. 22 Q. Okay. But part of the purpose is to 23 determine if changes should be made; correct? 24 A. It's part of the purpose. 25 Q. Okay. What's the other purpose?</p>	<p>119</p> <p>121</p> <p>1 Oh, that's a great job there. It's saying you were 2 within tactics, training, and policy. 3 Q. But it's not just -- I mean, you made 4 it very clear to me earlier, this isn't your opinion 5 in here? 6 A. Correct. 7 Q. Okay. This is the result of the SMEs 8 round-table with other people within CIRT. It's a 9 collective assessment of the different actions 10 related to this officer-involved shooting; correct? 11 A. Correct. 12 Q. And so if it says -- in the conclusions 13 if it says, you know, Conclusion, this was found to 14 be within LVMPD training, policies -- or whatever 15 the verbiage is, that's the way of saying this was 16 done correctly? 17 A. I'll call that a positive, for lack of a 18 better term. 19 Q. Okay. Okay. 20 And in terms of the document itself, you 21 tell me if I'm right or wrong. This is kept in a 22 certain drive; correct? 23 A. Yes. 24 Q. As we sit here today -- and I've given 25 you a copy of what I have if you want to leaf</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 through it. But as we sit here today, to the best 2 of your knowledge, this is an accurate copy of what 3 you drafted back in 2022; correct?</p> <p>4 A. Correct. 122 [sic] pages. I remember 5 the number pretty specifically.</p> <p>6 Q. And there's no reason to believe that 7 the content in here is not reliable in any way, in 8 terms of it being the final product of what you 9 created after a year; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And you have done your best in compiling 12 this, aside from the one issue that we had with 13 Mr. Bandiero. But for the most -- in terms of if 14 you're quoting somebody or something, or you're 15 putting it in italics, that is a cite from another 16 source that you cite within the report itself; 17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. And those -- the citations for those -- 20 you know, excluding, say, like, case law, the 21 citations for those -- for the interviews and stuff 22 like that, that's easily -- we're able to easily 23 authenticate that by looking at the report -- or 24 interview itself; correct?</p> <p>25 A. Yes.</p>	<p>122</p> <p>1 you know, part of your professional background, 2 that you're very familiar with search warrants, 3 but you had never executed one because you weren't 4 on SWAT?</p> <p>5 A. Correct.</p> <p>6 Q. Have you become -- in your execution of 7 a detective investigator through CIRT, have you now 8 become somewhat fairly or somewhat -- however you 9 want to qualify it, familiar with SWAT, the SWAT 10 manual, tactics, those types of things?</p> <p>11 A. Familiar how? Are you saying can I join 12 a stack right now and be part of an entry team?</p> <p>13 Q. No. And thank you for clarifying 14 because my question is a little bit different. 15 What I mean is, is, like, you're, like, 16 Yeah, the manual says this, this, and this. This is 17 their policies.</p> <p>18 Like, are you fairly familiar with those 19 types of issues now?</p> <p>20 A. Familiar in a respect of some of the 21 highlights. But I'm not required to know it, like, 22 head to toe like they are required to know it. I 23 use it. I reference it. As part of CIRT, you're 24 supposed to have access to everything in the 25 department. I can't possibly have every section</p>
<p>123</p> <p>1 Q. And you've gone to great pains to ensure 2 that if you quote something, cite something, 3 italicize it, however you do it, that that is also 4 an accurate quote or citation from whatever other 5 source you're pulling from; correct?</p> <p>6 A. Correct.</p> <p>7 Q. You tell me if I'm right or wrong. 8 Part of the round table or the administrative 9 review, do they also check that? Like, check your 10 cites? Do they do that kind of stuff? Or is that 11 all on you?</p> <p>12 A. Well, if we're talking about an 13 officer quote, I'm not going to get it from 14 anywhere else.</p> <p>15 So -- and the source material policy, 16 stuff that's derived from policy or manuals or case 17 law, was then put into our drive under a certain 18 folder which was put into our binders and whatever 19 is in front of you there, which would be part of 20 the, I guess, evidence as part of this case.</p> <p>21 Q. Okay. And in terms of -- like I 22 said, we're gonna -- in a few minutes we'll get into 23 the actual content of the report and stuff like 24 that.</p> <p>25 You talked to me that you are -- that,</p>	<p>125</p> <p>1 memorized.</p> <p>2 So I'm familiar with what I've 3 investigated on that day. And then if I have 4 another SWAT case, I'll become familiar with the 5 aspects related to that case that reference SWAT. 6 But to say I'm completely familiar with the 7 manual -- I believe it's 100-and-some-odd pages -- I 8 don't know it head to toe, top to bottom.</p> <p>9 Q. Is it your -- I mean, you put a lot of 10 time and effort -- part of your job -- and I'm 11 assuming on different cases, not just this one, but 12 it would appear that you put a lot of time and 13 effort into developing the recommendations and very 14 carefully analyzing the verbiage within the SWAT 15 manual; is that -- any manual you're analyzing, but 16 I guess in terms of this case, the SWAT manual; is 17 that correct?</p> <p>18 A. Can you rephrase?</p> <p>19 Q. Sure. When you are drafting the report 20 and you're forming these recommendations, you're 21 looking very careful at the manual -- carefully at 22 the manual; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And it is your expectation that, as you 25 go through and make these recommendations, that --</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>126</p> <p>1 sorry, you're not the one making the 2 recommendations -- but as recommendations are made, 3 that the other people looking at it will carefully 4 consider the changes, even if they're just slight 5 changes in the verbiage; correct?</p> <p>6 A. Well, they're not going to consider 7 changes, like, as a recommendation. They're not 8 going to be like, Okay, we'll take that into 9 consideration.</p> <p>10 At this point it was because they are 11 recommendations, because they got voted on at the 12 board, they are now going to happen. So now it's 13 about the implementation of those recommendations 14 based on whatever they were.</p> <p>15 So if there's a specific verbiage about 16 the SWAT manual needing to be updated to conform 17 with something, then that was a specific notation 18 and a recommendation that was required to because it 19 was voted on and approved as -- I forgot the three 20 categories for conclusions. I think it's on your 21 voting sheet that you had there. But it's 22 something, modify, and overturn.</p> <p>23 Q. And/or approve.</p> <p>24 A. Okay, so it is approve.</p> <p>25 Q. Do you expect the SWAT guys to be</p>	<p>128</p> <p>1 THE WITNESS: Is that "no knock"?</p> <p>2 MS. MURPHY: Yeah, officer may break 3 door to serve warrant. (Exhibit 4 marked.)</p> <p>5 BY MS. MURPHY:</p> <p>6 Q. So this is actually NRS 179.055. This 7 is actually the "knock and announce" statute.</p> <p>8 A. Yeah.</p> <p>9 Q. And so I'll represent to you that I 10 pulled this off the internet.</p> <p>11 A. Okay.</p> <p>12 Q. But you cite it throughout -- a couple 13 of times in the report. And I just wanted to 14 confirm the verbiage.</p> <p>15 It says, "The officer may break open any 16 outer or inner door of a window or a house."</p> <p>17 Is that what you read as well? In 18 Section 1?</p> <p>19 A. Page number 1? Yes.</p> <p>20 Q. Actually, sorry. Justin, let me give 21 you a -- if you want to just take a second to just 22 read the whole thing. It's not very long. If you 23 want to just read it and then let me know --</p> <p>24 A. I didn't know if you were talking about 25 reading the title of it or if you were at Number 1</p>
<p>127</p> <p>1 familiar with the SWAT manual?</p> <p>2 A. Absolutely.</p> <p>3 Q. And I guess that's a roundabout way of 4 me asking the question too. You put so much time 5 and effort into issuing recommendations that they 6 look at. I mean, part of that is that you expect 7 the operators to be familiar with the manual and 8 rely on it; correct?</p> <p>9 A. I would think that they would assume the 10 same for me, reference the CIRT manual. But they 11 wouldn't have really any reference to it because 12 they don't do my job. But they would expect that I 13 would have a vast knowledge of my CIRT manual.</p> <p>14 Q. Okay. All right. Let's talk about the 15 report itself.</p> <p>16 Before we get into the actual report, 17 I'm just going to do two preliminary items.</p> <p>18 You reference NRS 179.055 throughout 19 your report.</p> <p>20 A. Okay.</p> <p>21 MS. MURPHY: If we could mark this 22 Exhibit 4.</p> <p>23 THE WITNESS: And that's "no knock"; 24 correct?</p> <p>25 MS. MURPHY: What?</p>	<p>129</p> <p>1 there.</p> <p>2 So you're asking if the -- if it read, 3 "The officer may break open any outer or inner door 4 or window of a house"?</p> <p>5 Yes, that's what it says.</p> <p>6 Q. And so the statute itself includes both 7 the breaking of a door and a window; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So by the plain language of the 10 statute, whether it's a door or a window, once 11 there's entry made, it's being broken into; correct?</p> <p>12 A. Yes.</p> <p>13 Q. For the purpose of serving a search 14 warrant?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And then the other thing that I 17 am going to have you -- I'm just going to kind of 18 keep this to the side. And, Justin, I'll represent 19 to you that this is the -- basically the layout of 20 the apartment that I pulled from your report.</p> <p>21 A. Yep.</p> <p>22 Q. And I'm just going to give that to you, 23 because I think as we go through the report we talk 24 about different positions or things that happened. 25 So I think it will make it easier if we are working</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 off the same grid. 2 A. Okay. 3 MS. MURPHY: So if we could please mark 4 that. This is pulled from the report at LVMPD 4389. 5 (Exhibit 5 marked.) 6 BY MS. MURPHY: 7 Q. Does that look like your work? 8 A. It is. 9 Q. Okay. All right. So let's get into the 10 actual report itself. 11 So the very beginning of the report, 12 Justin -- actually, I'll skip to page 13. That's 13 Bates 4267. 14 A. Okay. 15 Q. And these are photos of the officers 16 that were involved; correct? 17 A. Correct. Well, this one specifically is 18 Sergeant Backman. 19 Q. Do you know where this picture came 20 from? Was this, like, the day of the shooting, or 21 was this -- 22 A. Correct, yes. So after officer-involved 23 shootings -- I don't remember where this was taken 24 because I wasn't out there and I wasn't told where 25 it was taken. Usually it's taken at a secure</p>	<p>130</p> <p>1 A. Taken at a secure location. Either -- I 2 don't remember where it was taken. It was at the 3 same day. 4 Q. Thank you for that clarification. 5 And then same thing with page 17. 6 That's Officer Rothenburg. 7 Let me ask the question more artfully. 8 This is the uniform he was wearing -- 9 this picture represents the uniform that he was 10 wearing at the time he was involved in the shooting? 11 A. Yes, correct. 12 Q. And then the following pages that we 13 have, the additional employees that were involved, 14 but these aren't shooters; correct? 15 A. These are -- so this page specifically, 16 and I believe it's the next page -- because there 17 were a lot of interviewees on this. So the next 18 three pages are people that were interviewed by 19 CIRT. So they're additional employees that were 20 interviewed by CIRT. 21 If there were any other employees that 22 were not interviewed by CIRT, that were interviewed 23 by FIT only, they would be noted at the bottom 24 here as interviewed by FIT only. However, I think 25 we did substantially more interviews than FIT did.</p>
<p>1 location, usually inside one of the vans -- sorry, 2 the buses run by the unions. 3 So they take an overall -- multiple 4 pictures -- this is just one of those pictures -- of 5 how they were at the time of the incident so you can 6 show that they were readily identifiable, that they 7 had all their proper gear on. It just shows them 8 how they were at the time. 9 Q. Okay. And then turning the pages to 10 page 14 and 15, they're just headshots of Officer 11 Kubla and Officer Clements; correct? 12 A. Correct. 13 Q. They were already -- they'd already 14 left? 15 A. They were in the hospital. So Officer 16 Kubla was in surgery at the time. Officer Clements 17 was at the hospital for his abrasion to his arm. He 18 had taken off all of his gear. That gear was 19 photographed on the ground, inside the bag where it 20 was located at. 21 Q. Then turning to page 16 and -- sorry. 22 16 is Officer Gonzalez? 23 A. Correct. 24 Q. And it's your understanding that this 25 was also taken at the scene; correct?</p>	<p>131</p> <p>1 I think we covered all of them by this point. 2 Q. Well, most people turn down FIT; 3 correct? Or all the -- 4 A. If you were involved as a subject -- if 5 you're noted as a subject in a shooting, then you 6 have the option to not speak with FIT. 7 However, if you are a witness officer 8 and they deem you a witness officer, you are 9 required to give a statement to FIT. 10 Q. And these are -- I mean, it's -- 11 it's -- it's -- it's spelled out here, but just to 12 confirm. 13 These are employees specifically; they 14 don't include civilian witnesses or anyone else? 15 A. No. Civilian witnesses are located on 16 page 20, and it's just the FIT report. So see the 17 FIT report that's attached. 18 Q. So you didn't interview any of the 19 civilian witnesses? 20 A. No. Because that's not our purview as 21 far as an administrative investigation goes. 22 They're not required to talk to us. 23 There are circumstances that CIRT does 24 interview civilian witnesses, but it also would 25 hinder the criminal investigation as far as getting</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 a sworn statement from somebody else that could 2 contradict.</p> <p>3 Q. Okay. And then the following page, 4 page 21, this is Isaiah Williams; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And then page 22, tell me what 7 this is.</p> <p>8 A. I'm just -- curiosity for me, just 9 before, because we spoke on this was unaltered. It 10 shows his birthday blacked out. I did not black out 11 his birthday on there.</p> <p>12 Q. So when we get provided the document 13 from Craig, there's -- even though he's technically 14 our client, there's certain things that they always 15 black out to protect people's privacy interests.</p> <p>16 So as we go through here -- I don't 17 think there's any Social Security numbers, but it's 18 just the practice of attorneys, when we have Social 19 Security numbers or birthdays, stuff like that, we 20 just -- they redact it before they provide it to us.</p> <p>21 A. Okay. I just want to make that clear, 22 that I did not redact a birthday on here.</p> <p>23 Q. Yeah, I know. And I don't know if there 24 will be any more. But if we come through a passage 25 in here where it's a black mark like that, it's</p>	<p>134</p> <p>1 But it's done through a system called OnBase. 2 Q. Okay. And then the following page, 3 what's this?</p> <p>4 A. Officer Clements' injuries.</p> <p>5 Q. Okay. And then the following page?</p> <p>6 A. Isaiah Williams' injuries.</p> <p>7 Q. Okay. And, again, this is done by the 8 crime scene investigators; correct?</p> <p>9 A. So this -- the diagram that you are 10 seeing right here is done by FIT. So this is from 11 the FIT report, as it says, I think, on the second 12 line above. It says "Per the FIT report."</p> <p>13 They attend autopsy. We do not attend 14 autopsies. So we are going based on the information 15 that was gathered from FIT.</p> <p>16 Q. And the autopsy -- because as we go down 17 the page, there's a toxicology report.</p> <p>18 So that's straight from the autopsy; 19 correct?</p> <p>20 A. From the FIT report. I can't speak on 21 the fact it was done specifically from the autopsy. 22 But from my understanding is that it was just in the 23 FIT report, and that's what we're going on.</p> <p>24 Q. Again, the FIT report, that is actually 25 published; correct?</p> <p>135</p> <p>1 A. Correct. I believe so. So I'll give 2 you a 90 percent sure.</p> <p>3 Q. That's fair. All right.</p> <p>4 And so then turning on to page 27, did 5 you put this chronology together?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. Okay. How long did this take you to do?</p> <p>8 A. It's relative to the case. I can't tell 9 you how long it took me to do.</p> <p>10 As far as this is usually what I do 11 toward the end of a report, to where I make sure 12 that anything that is relevant to the actual report 13 itself is noted in the timeline. That way if 14 there's any discussion on when something happened 15 that's referenced to the report, it's in there.</p> <p>16 I don't want to put -- just for an 17 example, let's say, if we're talking about what 18 happened after this OIS, I'm not going to put when 19 Sergeant X arrived that was part of Southeast Area 20 Command because there's no relevance to it.</p> <p>21 So I can't tell you exactly how long it 22 took, but this is just a culmination of the entire 23 report.</p> <p>24 Q. And so if I understand your prior -- the 25 testimony you just provided, this is also a timeline</p> <p>137</p>
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Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 of what you think relative time points are 2 throughout the case; correct? 3 A. Throughout the report. 4 Q. Sorry. Throughout the report. 5 A. Yes. 6 Q. Okay. And so if we now want to turn to 7 page -- we'll skip ahead to 30. Because we're going 8 to talk about the timeline, so we won't actually go 9 through that now. 10 A. Okay. 11 Q. And I want to clarify. 12 So it seems like in the investigative 13 narrative, you open it by kind of making a 14 distinction between -- there's an active 15 investigation. So I took that to mean that you 16 might have more information now, but in terms of 17 what's in this investigative report, or in this CIRT 18 report, is that you put in what was known at the 19 time? 20 A. Correct. And that's from -- so from my 21 understanding, I don't even know if this homicide 22 was ever closed. We have no -- I guess jurisdiction 23 would be a term to use. But we have no reason to 24 look into a homicide case. We're basing everything 25 off of what these officers knew at the time.</p>	<p>138</p> <p>1 been -- like, is this what the officers -- the 2 officers investigating the homicide, is this the 3 quality and nature of the video they would have seen 4 at the time? 5 A. Well, it's significantly more grainy on 6 this, which is a -- on black-and-white photograph, 7 not in the same resolution that you would see. 8 I will say that the video that was 9 obtained from that Chase Bank was put out on 10 LVMPD YouTube, and it was not at a high quality. It 11 was the same quality in the report and in the videos 12 that we had that we released. 13 I don't know the exact quality. I'm not 14 really proficient on P&I when it comes to clarity of 15 videos or photographs. 16 Q. Unfortunately, I can't make it part of 17 the record. But I will show you a color photograph 18 because I have it on my computer in color. 19 A. Now you just turned off. But I can tell 20 you -- I can tell you that that is a screenshot -- 21 Q. Okay. 22 A. -- from the highest resolution available 23 to me at the time. 24 Q. Okay. 25 A. If that makes sense.</p>
<p>1 So I don't know if this homicide 2 investigation has been closed, been solved, been 3 cold-cased. I have no idea one way or the other. 4 Q. Okay. And -- okay. 5 And so this photo in here, this is the 6 underlying Mr. -- sorry. This is Mr. Thomas' -- 7 this is the video from Sam's Town of Mr. Thomas' 8 homicide; correct? 9 A. Not of the homicide. This is at some 10 point he had walked to the casino and then 11 collapsed. This is body-worn camera from the 12 first-arriving officer who arrived as medical units 13 or security medical were attempting to, I guess, put 14 pressure on the wound or CPR. 15 But this is not where the homicide took 16 place, or at least the shooting took place. 17 Q. If you go to the next page, page 31 -- 18 A. Okay. 19 Q. -- where did you pull this map from? 20 A. This was from our understanding -- so 21 this is from Google Earth. 22 Is that the question? 23 Q. Yes. 24 And so let's turn the page then to 25 page 32. And this is the -- do you know if this has</p>	<p>139</p> <p>141</p> <p>1 Q. Yes. But I guess my question, was this 2 the highest resolution of what the officers -- like, 3 is this what the -- is this the highest resolution 4 of what the officers would have had too? 5 A. Of -- yes, of any video. There was no 6 clearer version of that. 7 Q. Okay. And so that would be the same 8 thing then on the following page; correct? 9 A. Correct. 10 Q. And this -- I'll turn this around and 11 show you. This is the color version. 12 And to the best of your memory, this 13 accurately represents -- 14 A. Outside of me putting the tags on there, 15 the red tags and the circles, that is a screenshot 16 of the video itself in a still frame. 17 Q. And so are you -- are you the one taking 18 the screenshots? 19 A. Yes. 20 Q. Okay. Do you remember why you chose 21 these frames? 22 A. It clearly, as best possible, showed the 23 subjects involved in this homicide as best possible, 24 as you said. They're not exactly the most 25 high-definition photographs or videos.</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 But the homicide itself, the individual 2 that is circled to the farthest right, where the 3 line is pointing to it, it says "Unknown Suspect" -- 4 not the one that says "Thomas and Unknown 5 Suspect" -- "Unknown Suspect" I believe goes in 6 front of a tree right before the homicide. 7 So this just shows the same person 8 wearing the same clothing was pictured from this 9 angle, to the best of the ability to illustrate to 10 somebody that doesn't have access to the video, 11 that's just reading the report, that this is the 12 same person that was shown on the previous page, of 13 page 32.</p> <p>14 Q. But it's a different -- 15 A. Different angle from the bank. 16 Q. Okay. Then the following page, 17 page 35 -- sorry. A few pages up. 18 And my -- normally, when you're doing a 19 CIRT report, would you include this much discussion 20 about the underlying homicide investigation?</p> <p>21 A. No. 22 Q. Why was that included in this report? 23 A. I was ordered to. 24 Q. By whom? 25 A. By, I'm assuming, executive staff.</p>	<p>142</p> <p>1 was? It was a stop. 2 So this traffic officer probably got the 3 information of the car, whether it be a temporary 4 tag or prior registration or current insurance, and 5 then inputted that into the citation, which would 6 trigger then a previous event. 7 Q. And then going to the next page, 8 page 36, I understand from having read the content 9 of the report -- I wanted to kind of ask though -- 10 so these -- what are these called? They're just -- 11 are they cameras around town that capture people's 12 license plates? 13 A. Automatic -- sorry. Automatic license 14 plate readers. They're at fixed positions. 15 A lot of tow trucks actually have 16 them on the front. We have access to those. 17 And those get compiled into a database, and I 18 believe Fusion Watch, which is a section of our 19 department, gets notification if there's a hit on 20 the plate, whether it be a stolen vehicle or 21 anything like that. 22 Q. But it's also searchable; correct? 23 A. It's also searchable, yes. 24 Q. And then if you can turn to the 25 following page, page 37, can you tell me what</p> <p>144</p>
<p>1 I explained my concerns, as being in the 2 unit for three years, of not focusing narrowly on 3 the actual application of use of force and the 4 tactics that were involved with it. However, when 5 that was run up the chain of command -- my captain 6 at the time was Carlos Hank. He relayed those 7 concerns, and we were told to go into the homicide 8 investigation. 9 I don't know who made that decision. At 10 the time the executive staff was under Joe Lombardo, 11 and Chris Darcy was the undersheriff. I can't tell 12 you who made that decision for us to do that, but 13 that was what was determined. 14 Q. Okay. And so then if we turn to page 35 15 of the report, that's a traffic stop; correct? 16 A. Correct. 17 Q. And that was based off the license? 18 A. I believe so -- 19 Q. I don't see a license. 20 A. So it might have been a front plate. 21 I'm not exactly sure how this was -- I know that it 22 was in their case notes as far as the homicide 23 investigation was going, completed by the IS, which 24 is investigative specialist. 25 This was maybe -- you know what this</p>	<p>143</p> <p>1 that is? 2 A. This looks like a PIO, which is the 3 Office of Public Information. Their immediate 4 release referenced the homicide detectives looking 5 for help. It's just a one-page memo asking for help 6 from the community. 7 Q. And then we'll skip ahead a couple of 8 pages to page 39. 9 A. Okay. 10 Q. I'm sorry. If we can go back to 38, 11 please. Sorry. 12 Can you tell me what that is? 13 A. So this was a call for service that 14 happened at the area of 3050 South Nellis, where the 15 service of the search warrant eventually happened. 16 This was a call for service, referenced an 17 individual in a white Ford, I believe it was. And 18 he had an AR-15 on his back, and the person 19 reporting noted that he was wearing an ankle 20 bracelet. 21 So this is tracking from Corvell Fisher, 22 who was the individual who was tracked on that ankle 23 bracelet, and kind of his movements per that 24 electronic monitoring system that correlated with 25 the events that the person reporting gave to</p> <p>145</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 officers.</p> <p>2 Q. So they were able to track Corvell's</p> <p>3 location; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And they –</p> <p>6 A. On that -- sorry. On that day. I don't</p> <p>7 remember if it had gone dead or if he cut it off at</p> <p>8 that point. But I know at one point it wasn't</p> <p>9 showing or something. But at that day and time,</p> <p>10 yes, it was recording.</p> <p>11 Q. Okay. And then on page 39, you're</p> <p>12 talking about the surveillance requested at</p> <p>13 4475 Jimmy Durante Boulevard. And in the center of</p> <p>14 the page you state, "The surveillance objectives on</p> <p>15 the surveillance request were listed as," and then</p> <p>16 you list them off.</p> <p>17 Why did you include that section in your</p> <p>18 report?</p> <p>19 A. It was factual. It was what they were</p> <p>20 identifying they were looking for, for those</p> <p>21 individuals.</p> <p>22 Q. Okay. And then the following page,</p> <p>23 what's that?</p> <p>24 A. Two photographs. One of Ariel Soto. I</p> <p>25 believe she was the registered owner of that vehicle</p>	<p>146</p> <p>1 undetermined from that point from investigators if</p> <p>2 that was a male or a female.</p> <p>3 There was also a sweatshirt that was in</p> <p>4 question that was identical in nature as far as it is</p> <p>5 being a Puma sweatshirt, hooded sweatshirt.</p> <p>6 However, it was a different color than the one that</p> <p>7 was worn on the night of the homicide.</p> <p>8 Q. In your personal opinion, does that look</p> <p>9 like a man or a woman?</p> <p>10 A. Are you saying as far as this report</p> <p>11 goes?</p> <p>12 Q. Yeah, I'm asking for your personal</p> <p>13 opinion.</p> <p>14 A. It's a shaved-head individual. Without</p> <p>15 saying -- it's hard to tell from it. I can't say</p> <p>16 one way or another if it was a male or a female or</p> <p>17 not. There's no identifying markers. You can't</p> <p>18 see. It's not an exposed shirt. It's a hooded</p> <p>19 sweatshirt. It's an individual with a shaved head.</p> <p>20 Could I see an argument for both ways?</p> <p>21 Yes. But there's no way to definitively -- I</p> <p>22 wouldn't say it's definitively a male. I wouldn't</p> <p>23 say it's definitively a female. I would say it's</p> <p>24 unknown is the way I presented it.</p> <p>25 Q. And then if you -- if you turn to</p>
<p>147</p> <p>1 they were looking into. And an unknown male is the</p> <p>2 second photograph with her. And this is just going</p> <p>3 to their surveillance for the days that they were</p> <p>4 looking at that Jimmy Durante address.</p> <p>5 Q. And this is related to the underlying</p> <p>6 homicide; correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And then the next page?</p> <p>9 A. This is a photograph of an unknown male.</p> <p>10 Again, related to the apartment numbers that Soto</p> <p>11 was frequenting. I'm not sure -- I think this male</p> <p>12 went to the Circle K maybe, without reading it.</p> <p>13 It was just outlining of the photographs</p> <p>14 of the person who they were taking a photo of.</p> <p>15 Q. Okay. And then the next page, page 42.</p> <p>16 A. This is individual, again, photographed</p> <p>17 that was frequenting the car or the apartment that</p> <p>18 was frequented by Soto.</p> <p>19 Q. This turned out to be somewhat of a</p> <p>20 controversial photo or suspect, didn't it?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And why was that?</p> <p>23 A. This individual had a shaved head. I</p> <p>24 have "Unknown Subject" there because there was a</p> <p>25 controversy of is this a male or a female. It's</p>	<p>149</p> <p>1 page 43.</p> <p>2 A. Okay.</p> <p>3 Q. And these are just more individuals</p> <p>4 that they saw coming and going from the unit;</p> <p>5 correct?</p> <p>6 A. Correct. And they identified Devonte</p> <p>7 Reynolds as one of these individuals, and I don't</p> <p>8 know how they identified him as that. But that's</p> <p>9 why he's not pictured as "Unknown Male." He's</p> <p>10 "Devonte Reynolds."</p> <p>11 Q. Okay. And turning then to page 44,</p> <p>12 there's an outline of a shooting at 3050 South</p> <p>13 Nellis; correct?</p> <p>14 A. Correct.</p> <p>15 Q. And you talked about that briefly</p> <p>16 before, when we looked over the photo of the</p> <p>17 location of his ankle monitor; correct?</p> <p>18 A. These were two separate instances.</p> <p>19 Q. Okay.</p> <p>20 A. The one on the 12th was where Corvell</p> <p>21 Fisher or a subject described as a black male</p> <p>22 wearing a white T-shirt and black shorts, I believe</p> <p>23 it was, had a rifle over his shoulder or strapped to</p> <p>24 his back, and he had an ankle monitor on. This is a</p> <p>25 different case from that.</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">150</p> <p>1 Q. Okay. And what was this case?</p> <p>2 A. This was a shooting that took place I 3 believe over road rage inside that same apartment 4 complex. The event happened six days after the 5 event that you were just speaking of on the 12th 6 with the rifle over the back.</p> <p>7 And this individual, I believe it was in 8 Wattsel Rembert's car that was recovered later that 9 was involved in the road rage traffic accident, 10 where the individual that was fighting with the 11 victim of this shot up the apartment complex. 12 Multiple rounds were fired. I believe in the 20s if 13 I had to go off memory. I can't find it right here.</p> <p>14 But in the back of that car, after a 15 search warrant was done of the vehicle, after it was 16 determined to be unoccupied, this MP5-style pistol, 17 which looks like a rifle but is legally a pistol, 18 was recovered in the back.</p> <p>19 Q. And so these -- I mean, as we kind of 20 talk about these different incidents, not including 21 the actual surveillance itself, but as we talk about 22 the different incidents and stuff, these are all 23 part of, like, public record; correct? Because 24 there would be, like, police reports associated with 25 them?</p>	<p style="text-align: right;">152</p> <p>1 identify him from the video. You then take the 2 snapshot of the video again; correct? And this is 3 the same snapshot you had earlier in the report; 4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. And then you also then -- I mean, you 7 interviewed -- I mean, you interviewed Detective -- 8 is it Grimmett or --</p> <p>9 A. Grimmett.</p> <p>10 Q. Yeah, Grimmett.</p> <p>11 You yourself interviewed Detective 12 Grimmett; correct?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And so you talked about during 15 the CIRT interview, when you pulled this -- this 16 is -- this is excerpts from Dr. -- Detective 17 Grimmett's actual interview with you?</p> <p>18 A. Correct.</p> <p>19 Q. And it would appear that part of your 20 discussion or cross-examination, for lack of a 21 better term, with Detective Grimmett was whether or 22 not he felt that Janetta Wattsel [sic] was a 23 reliable informant; is that correct?</p> <p>24 A. Correct.</p> <p>25 Q. And why were you trying to determine</p>
<p style="text-align: right;">151</p> <p>1 A. Yes.</p> <p>2 Q. And so now if we can please turn to 3 page 45.</p> <p>4 A. Okay.</p> <p>5 Q. And so who is Janetta Rembert?</p> <p>6 A. That would be the stepmother of Wattsel 7 Rembert. Or some relation. I don't believe it's 8 her blood son, but his relation -- she says she was 9 his mother, but I think there was some confusion on 10 that. I think eventually it was like stepmother or 11 something like that.</p> <p>12 Q. Did you listen to the actual interview 13 itself?</p> <p>14 A. I watched the whole thing. It was a 15 video-recorded interview.</p> <p>16 Q. And my understanding is that she 17 had made some inference at the end that Wattsel 18 was saying that the police weren't going to get him.</p> <p>19 I mean, did she come out and say that, 20 or did she make some inference about it?</p> <p>21 A. I don't recall.</p> <p>22 Q. Okay. And you tell me if I'm right or 23 wrong. If you turn to page 48 -- because you're 24 citing the interview with who we presume to be 25 Wattsel's stepmother, and she's saying she can</p>	<p style="text-align: right;">153</p> <p>1 that?</p> <p>2 A. Because we were tasked with breaking 3 down the homicide investigation of where it was at 4 that point, and it was important for me to get the 5 full story of why he believed that individual was a 6 reliable source.</p> <p>7 Q. And then you walk through the LVMPD -- 8 so this isn't the SWAT policy, though. This is --</p> <p>9 A. Which page?</p> <p>10 Q. Sorry. I'm sorry. Page 50.</p> <p>11 A. Okay.</p> <p>12 Q. And this is the actual LVMPD policy 13 about relying on informants; correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. So if you turn to page 51, if we 16 go down, it's the -- hold on. It's this paragraph 17 right here (indicating).</p> <p>18 A. Okay.</p> <p>19 Q. The last full paragraph before the end 20 of the page.</p> <p>21 It talks about Janetta and Ty'Shawn, and 22 it says "were reliable witnesses coming forward 23 without provocation."</p> <p>24 Is this your analysis?</p> <p>25 A. I believe that was the analysis of the</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>154</p> <p>1 section. Not specifically my opinion, but it was 2 the analysis of the section that they were reliable 3 witnesses coming forward without provocation. And 4 that met the policy and the statutes.</p> <p>5 Q. Okay. And so then if we turn to 6 page 52 --</p> <p>7 A. Okay.</p> <p>8 Q. -- it talks about -- this talks about a 9 surveillance -- what's TASS?</p> <p>10 A. TASS is a -- the technical -- again, 11 acronyms with our department. Essentially they do a 12 lot of -- they're responsible for the surveillance, 13 covert surveillance, with electronic devices.</p> <p>14 So if you needed cameras put up 15 somewhere that were either covert or overt, they 16 would be the unit to do that. We don't have access 17 to them as detectives just randomly. You have to go 18 through TASS to get that equipment put up, and they 19 have procedures on how they are able to do that or 20 not do that.</p> <p>21 Q. And so is it just putting up cameras, or 22 is it also doing surveillance?</p> <p>23 A. TASS doesn't do the surveillance 24 necessarily. Those are specialized units within the 25 department. Criminal Intel I believe is what they</p>	<p>156</p> <p>1 Q. Yeah. 2 A. Yep. 3 Q. And so if you turn to page 54, the very 4 last sentence. This is the sentence from the CIRT 5 report.</p> <p>6 "This was the only surveillance 7 operation conducted at 3050 South Nellis Boulevard, 8 Apartment 1125. Wattsel and Fisher were never 9 identified inside of or around the apartment."</p> <p>10 And that's your synopsis of the outcome 11 of the surveillance; correct?</p> <p>12 A. Correct.</p> <p>13 THE WITNESS: Before we get into this 14 next section, can I take a quick break?</p> <p>15 MS. MURPHY: Absolutely.</p> <p>16 THE VIDEOGRAPHER: Off the record at 17 12:31 p.m.</p> <p>18 (A break was taken.)</p> <p>19 THE VIDEOGRAPHER: On the record at 20 12:52 p.m.</p> <p>21 BY MS. MURPHY: 22 Q. And so, Justin, before we took a break, 23 I think we were roughly on page 55 -- that seems to 24 be the same page you're on -- on the CIRT report. 25 And so can you just tell me what</p>
<p>155</p> <p>1 are. TASS will just get the equipment in place. 2 Q. But no equipment was put in place 3 regarding this investigation -- sorry, regarding the 4 surveillance at 3050 South Nellis; correct?</p> <p>5 A. Correct. And -- I'll reserve that. If 6 you ask about it, it's more technical jargon.</p> <p>7 Q. And so then turning the page to page 53, 8 are these the photos of when the surveillance team 9 at 3050, for lack of a better term, got burned? Is 10 that how you would say it?</p> <p>11 A. Yes. And that was from their notes from 12 the CIS, which is that Criminal Intelligence 13 Section, while they were conducting the 14 surveillance, that an unknown male was peeking into 15 cars, and they felt like that was 16 counter-surveillance on their position.</p> <p>17 Q. And this was the rough -- this was the 18 totality of like an hour and a half of surveillance 19 on this entire -- on the South Nellis Boulevard 20 unit; correct?</p> <p>21 A. I don't remember the time exactly, but 22 it's around there.</p> <p>23 Q. You have it in your timeline. 24 If we go to page --</p> <p>25 A. So, yeah, about an hour and a half.</p>	<p>157</p> <p>1 this is?</p> <p>2 A. This is a picture I believe from the 3 second day of surveillance on the Jimmy Durante 4 address of two unknown individuals exiting one of 5 the apartments associated with the vehicle 6 belonging to Soto.</p> <p>7 Q. Okay. And turn the page to page 56.</p> <p>8 A. Same -- same thing. Individuals who are 9 associated with either the vehicle or the apartment, 10 that were going in and out of that apartment or 11 vehicle.</p> <p>12 Q. And the CIRT investigation didn't have a 13 problem, other than the potential misidentification 14 of the woman, but the CIRT investigation didn't have 15 a problem with the amount or -- the amount of 16 surveillance that was done on Jimmy Durante; 17 correct?</p> <p>18 A. Not necessarily. "Problem" is maybe the 19 wrong word. Obviously having the more surveillance 20 the better.</p> <p>21 But what they determined was they had 22 sufficient evidence of that vehicle being 23 associated to Jimmy Durante because that individual 24 was going in and out of the apartment and operating 25 the vehicle they believed to be a part of the</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

	158	160
<p>1 homicide.</p> <p>2 As far as the other address, again,</p> <p>3 perfect world, you would like to see -- and I'm not</p> <p>4 sure if we've gotten to it yet. We haven't gone</p> <p>5 past it yet. But the CIS team, Criminal Intel</p> <p>6 Section, especially Team 5, I believe, is the team</p> <p>7 that is the super-secret team --</p> <p>8 Q. Is that its official title?</p> <p>9 A. Not their official title. But they're</p> <p>10 people who don't even -- they don't associate with</p> <p>11 cops. They are very, very undercover. They were</p> <p>12 the team that got burnt on this.</p> <p>13 Q. "On this" you mean the 3050; right?</p> <p>14 A. On the 3050, correct.</p> <p>15 And when there's -- the way that</p> <p>16 apartment complex was situated, where that door was</p> <p>17 situated, it was extremely difficult to get live</p> <p>18 eyes on that door because of the angles.</p> <p>19 It was also difficult -- not difficult,</p> <p>20 but also borderline impossible, based on TASS's</p> <p>21 requirements when it comes to getting cameras up,</p> <p>22 because of power sources needed to be available.</p> <p>23 Q. We're going to get to all that. Don't</p> <p>24 worry.</p> <p>25 A. Okay.</p>	<p>1 improper, based on the number of unknowns they had;</p> <p>2 correct?</p> <p>3 A. And there are other ways to determine</p> <p>4 identities outside of surveillance. So surveillance</p> <p>5 isn't the only key.</p> <p>6 So to say there wasn't enough</p> <p>7 surveillance for this operation is subjective based</p> <p>8 on what the outcome was. It's not the end-all,</p> <p>9 be-all of how we get intelligence of who's living</p> <p>10 where.</p> <p>11 Q. But they didn't do the other</p> <p>12 intelligence mechanisms either; correct?</p> <p>13 A. I guess we'll get to that when we</p> <p>14 read it.</p> <p>15 Q. Correct.</p> <p>16 A. But as far as -- not all of them that</p> <p>17 were available to them.</p> <p>18 Q. Okay. And so now if we turn to</p> <p>19 page 57 --</p> <p>20 A. Okay.</p> <p>21 Q. -- this has to do with the search</p> <p>22 warrant itself.</p> <p>23 And, again, your knowledge of</p> <p>24 completing and filling out search warrants, as you</p> <p>25 testified to earlier, was the foundation for you</p>	
	159	161
<p>1 Q. It's in your report.</p> <p>2 A. Sure. But I'm going with the --</p> <p>3 Q. Okay.</p> <p>4 A. -- surveillance part of it.</p> <p>5 Q. Okay.</p> <p>6 A. So could you have done more</p> <p>7 surveillance? I'm not sure. I'm not -- I'm not</p> <p>8 part of that CIS squad.</p> <p>9 Q. But when you talk about "more," you're</p> <p>10 talking about 3050; right?</p> <p>11 A. Correct.</p> <p>12 Q. Okay.</p> <p>13 A. I'm not sure if that would be something</p> <p>14 that would be reasonable. Because of the way it's</p> <p>15 angled and because they had just previously -- the</p> <p>16 best team we have on the department just got burned.</p> <p>17 I'm not sure if that would be reasonable enough to</p> <p>18 continue to do that for officer safety purposes, if</p> <p>19 that makes sense --</p> <p>20 Q. It does.</p> <p>21 A. -- as far as the surveillance goes.</p> <p>22 Q. No, I get that. But regardless, there</p> <p>23 were still a bunch of unknowns; correct?</p> <p>24 A. Sure.</p> <p>25 Q. That made their decision on the tactics</p>	<p>1 volunteering to be the CIRT investigator on this</p> <p>2 case; correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And in where you are citing --</p> <p>5 where you are citing the content of the 3050 South</p> <p>6 Nellis Boulevard search warrant, you have several</p> <p>7 items that are highlighted and bolded.</p> <p>8 Why did you bold those items?</p> <p>9 A. I think the "Any and all firearms" might</p> <p>10 have been bolded due to them being involved in the</p> <p>11 homicide.</p> <p>12 "Cellular phones" would be something</p> <p>13 that you could track somebody with.</p> <p>14 And the "Clothing" was specifically</p> <p>15 mentioned inside of the statement.</p> <p>16 I'm not sure if those were bolded on the</p> <p>17 actual content. If they are -- do you have a copy</p> <p>18 of the actual search warrant? They might have been</p> <p>19 bolded on there. I might not have bolded them.</p> <p>20 Q. I don't -- I'll represent -- I am going</p> <p>21 to try to refresh -- I'll see if I can find the</p> <p>22 actual search warrant.</p> <p>23 But my understanding of why you bolded</p> <p>24 these is because there were issues with the</p> <p>25 descriptions -- the descriptions themselves.</p>	

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 Like, you go on to say why "Any and all 2 firearms" is not -- it's improperly vague, the 3 "Cellular phones" is improperly vague, and the 4 "Clothing" is improperly vague, based on the 5 standard of how somebody is supposed to fill out a 6 search warrant.</p> <p>7 A. Okay.</p> <p>8 Q. I'll refresh your recollection and keep 9 going.</p> <p>10 A. Sure. I just wasn't sure.</p> <p>11 Q. No, that's okay.</p> <p>12 And so, like, if you go down right to 13 the bottom of the page, like on the last line, last 14 paragraph -- or the second-to-last line, right, you 15 talk about Thomas -- the murder -- the body -- was a 16 small caliber, possibly a .22 or .25 caliber, per 17 the IAP and officer's reports.</p> <p>18 So the understanding is the Number 1, 19 "Any and all firearms," they actually know what 20 caliber firearms they're looking for?</p> <p>21 A. Correct.</p> <p>22 Q. So in that context, would any -- "Any 23 and all firearms" is an improper way to fill out a 24 search warrant; correct?</p> <p>25 A. So improper? No.</p>	<p>162</p> <p>1 the same information, they read the same search 2 warrants, and were present with the detectives when 3 those were signed.</p> <p>4 So that's -- when we talk about 5 improper, if it was improper, then I feel like 6 that's more of a legal standpoint. But as far as 7 LVMPD is concerned, they met the minimum 8 requirements.</p> <p>9 Q. So just listing off "Any and all 10 firearms" meets the requirement of describing with 11 particularity the items or things to be considered 12 under LVMPD Policy 5/200.01, Section B [sic]?</p> <p>13 A. Again, it was hard for us to say that 14 was improper when a judge and a DA said it was 15 acceptable.</p> <p>16 And I get we're talking about policy 17 versus law, but a lot of our policy is constructed 18 off of NRS. So when we're discussing those aspects, 19 I wish I could have asked those questions to the DA 20 and to the judge, because that would help me with a 21 little bit of clarity of had they known that that 22 was -- specifically when we talk about the 23 sweatshirt and -- later on in the report, and 24 firearms.</p> <p>25 Now, I will say that putting "Any and</p>
<p>1 I will say this: Is that these 2 detectives met the minimum requirements that were 3 established by policy and by their department 4 manual.</p> <p>5 I will say that I did have several 6 questions about those vague mentionings of "Any and 7 all firearms," "Cellular phones," and "Clothing," 8 which I would have loved to interview the DA that 9 approved it and the judge who signed it. However, 10 that wasn't in our purview, being an administrative 11 investigation.</p> <p>12 At the end of the day, it met the 13 minimum requirements for LVMPD as far as the content 14 of the search warrant, and it was signed by a judge 15 and a district attorney.</p> <p>16 So as far as arguing the validity of the 17 search warrant, we can say that it should have been 18 more specific to those items. And, again, I can't 19 inject my personal opinion into this. But we're 20 just pointing out the obvious of what was mentioned 21 in those reports, like I mentioned in this report. 22 But it was determined that this was minimum 23 requirements of LVMPD, and it was signed by a judge 24 and signed by a district attorney.</p> <p>25 And my assumption would be that they got</p>	<p>163</p> <p>1 all firearms" is something that is common because 2 bullets can get degraded in bodies when they go 3 through the trauma of bullets. So they can fragment 4 off. They can look smaller than they appear. It's 5 not uncommon. So "Any and all firearms" is 6 something that would be acceptable from, again, that 7 minimum standard. Because without the gun 8 specifically there with you, you can say it's a 9 smaller caliber, but do we really know?</p> <p>10 Q. Well, you describe it as "too vague" in 11 here.</p> <p>12 A. Correct. Our -- our unit came through 13 as saying "too vague."</p> <p>14 But at the end of the day -- and I 15 believe the conclusion reflects this, and correct me 16 if I'm wrong -- it seemed to be reasonable on the 17 search warrant, if I'm correct.</p> <p>18 Q. Okay.</p> <p>19 A. So we identified that it is vague. And 20 that's why we interviewed those two detectives.</p> <p>21 And I'd like to determine that real 22 quick that that's what the conclusion meant, 23 because, again, it has been a second.</p> <p>24 Q. Justin, however you want -- that report, 25 that's your version, so however you want to flip</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>166</p> <p>1 through it to give your best and most accurate 2 testimony, please feel free.</p> <p>3 A. Okay. So my mistake. I would like to 4 strike all that, what I said. I was giving my 5 interpretation of that policy as it was written 6 through legal's aspect as far as being a good 7 search warrant.</p> <p>8 We did say that it was not acceptable.</p> <p>9 Q. Okay. No worries. Listen, what I -- my 10 whole -- I'm really not trying to trick you on 11 anything. So however you need to do this to give me 12 your best and accurate testimony -- I know I already 13 said that, but that's a -- I really want you to do 14 that.</p> <p>15 A. Sure. And just to explain.</p> <p>16 Again, team effort. So looking at 17 things, sometimes the -- my recollection of things, 18 obviously being a -- somebody who's done search 19 warrants was why I had an issue with it being too 20 vague.</p> <p>21 However, I guess where I got maybe 22 tripped up was is it a good search warrant.</p> <p>23 So yes, it's still a good search 24 warrant, based on the fact that it was signed by a 25 DA and a judge.</p>	<p>168</p> <p>1 questions. But yes.</p> <p>2 Q. Okay. Well, sorry. That's fair.</p> <p>3 This is part of the CIRT interview; 4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. Yeah. And he's essentially justifying 7 why he felt it could go either way; correct?</p> <p>8 A. Yeah.</p> <p>9 Q. Okay. But as is later discussed within 10 the report, the sweatshirt itself is also different?</p> <p>11 A. Correct.</p> <p>12 Q. And if you turn to page 64, you created 13 this side-by-side; correct?</p> <p>14 A. Correct.</p> <p>15 Q. And what was your purpose in creating 16 the side-by-side?</p> <p>17 A. To show that the sweatshirts are 18 similar, meaning that they are from the same brand, 19 the same style, the same everything, except they are 20 reverse color-schemed. Which -- and, again, the 21 explanation was something along the line of gang 22 members buy multiples of the same shirts in 23 different colors was, I believe, their testimony on 24 that.</p> <p>25 But to show that we're talking about a</p>
<p>167</p> <p>1 Q. Okay. And that's fair.</p> <p>2 So if we can skip ahead to page 61. And 3 the paragraph right over the -- I think this is -- 4 right over the photo.</p> <p>5 A. Okay. 61? I'm sorry.</p> <p>6 Q. Yeah. You pull out the statement -- 7 sorry. You pull out the end of the probable cause 8 statement provided by Dr. Grimmett. Open quote, 9 "One of the males was observed wearing clothing like 10 the clothing worn by the shooter, a Puma brand 11 sweatshirt with a vertical stripe down both 12 sleeves."</p> <p>13 A. Correct.</p> <p>14 Q. And so you highlight then, this is that 15 the -- as Detective Grimmett describes the male, 16 this is in fact described as a female in the 17 surveillance logs; correct?</p> <p>18 A. Correct.</p> <p>19 Q. And then the following -- the following 20 page, page 62, that's you interviewing -- or that's 21 you, yeah, interviewing Detective Grimmett about 22 that; correct?</p> <p>23 A. I was in the interview. I'm not sure if 24 this was me actually asking the questions. But, 25 yes, I was part of this. It could be me asking the</p>	<p>169</p> <p>1 specific sweatshirt here did not match the actual 2 sweatshirt that was inside of the surveillance 3 photo -- or video, sorry.</p> <p>4 Q. Correct. Okay. Thank you.</p> <p>5 And then there's -- I'll represent -- I 6 don't think we need to go over it. I'll represent 7 to you it's pages and pages of Detective Grimmett 8 fighting with whoever the CIRT interviewer was.</p> <p>9 A. Probably me.</p> <p>10 Q. Probably you.</p> <p>11 And this is described as -- in your 12 CIRT report -- sorry, in the CIRT report, on 13 page 80 -- sorry, on page 68, it says, "The omitted 14 information was exculpatory evidence, and the color 15 of the sweatshirt and alleged sex of the unknown 16 subject, as observed by surveillance detectives in 17 the surveillance logs, should have been added in the 18 warrant."</p> <p>19 A. Correct.</p> <p>20 Q. And was that part -- and I'm sorry, 21 there's so many conclusions now, I don't remember 22 off the top of my head.</p> <p>23 Was that -- was that something that was 24 effected as a recommendation, that they should start 25 including exculpatory evidence in the warrant</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>170</p> <p>1 applications?</p> <p>2 A. I don't know if that was a</p> <p>3 recommendation. I think it was something that</p> <p>4 should have been done either way. I believe it was</p> <p>5 in policy. If not, I can look through there, but</p> <p>6 I'm not sure -- again, you talk about the reason why</p> <p>7 I took this case is search warrant experience. And</p> <p>8 I can't put my personal of what I would have done on</p> <p>9 there because I have to be very objective on what is</p> <p>10 in front of me and why was it done.</p> <p>11 At the end of the day, the</p> <p>12 determination was that color should have been</p> <p>13 added to the warrant because we don't know if the</p> <p>14 judge or the DA had access to the pictures that</p> <p>15 would show it otherwise not. That was our concern,</p> <p>16 but we couldn't confirm that because we weren't</p> <p>17 allowed to talk to them.</p> <p>18 Q. Okay.</p> <p>19 A. I'm just trying to find your -- the</p> <p>20 question referenced the --</p> <p>21 Q. We can actually put a pin in that and</p> <p>22 come back to it at the end.</p> <p>23 A. No, there is. It's Section B of 9.2,</p> <p>24 "Current training and policy does not mandate</p> <p>25 detectives to include exculpatory evidence when</p>	<p>172</p> <p>1 detectives that it had changed.</p> <p>2 One of the people who was responsible</p> <p>3 for that change was Lieutenant Johansson, who is on</p> <p>4 the search warrant committee, who was one of the</p> <p>5 authors or one of the signatures on this page.</p> <p>6 So when this got to him to approve it, I</p> <p>7 believe from his statement, just off memory, that he</p> <p>8 recognized it. Or maybe it was Captain Cole.</p> <p>9 Somebody recognized that it wasn't the new 14-page</p> <p>10 document, which is very similar but just asked for</p> <p>11 more questions to help SWAT make a determination.</p> <p>12 And this was only 11 pages long.</p> <p>13 The reason why this was something,</p> <p>14 11 versus 14, is there was a reproduction of</p> <p>15 pages after it was denied. Yeah, so it was</p> <p>16 Captain Cole who said, Please resubmit on the new</p> <p>17 SWAT IAP that was provided to all lieutenants a</p> <p>18 couple weeks ago.</p> <p>19 So it was just him, after he got it as</p> <p>20 the SWAT commander, recognizing that it wasn't the</p> <p>21 new one that was finalized but not pushed through</p> <p>22 the department, just through the lieutenants.</p> <p>23 So when it was returned through, what</p> <p>24 caught our eye, and it was not caught by the</p> <p>25 reviewers of this, was that at one point I believe</p>
<p>171</p> <p>1 completing a search warrant. CIRT recommends</p> <p>2 verbiage be added to the Search Warrant lesson plan</p> <p>3 and Department policy," which I think has been done.</p> <p>4 And that was obviously a concern of ours.</p> <p>5 Q. Okay. And then if you want to turn to</p> <p>6 page 70. You can skip all the fighting between you</p> <p>7 and Detective Grimmett.</p> <p>8 A. It wasn't necessarily fighting.</p> <p>9 Q. Intense discussions?</p> <p>10 A. Differences -- differences of opinion.</p> <p>11 Q. Fair enough.</p> <p>12 So page 70. So this is the "Search</p> <p>13 Warrant Incident Action Plan"?</p> <p>14 A. Correct.</p> <p>15 Q. And so this is the -- what we call --</p> <p>16 this is the IAP that we refer to throughout -- I</p> <p>17 mean, this is going to be the next --</p> <p>18 A. I believe this is Version 1 of the IAP.</p> <p>19 Q. Yeah. And so, I mean, we can -- I think</p> <p>20 on the IAP -- we'll weave through the report as</p> <p>21 well, but it seems that you're very familiar with</p> <p>22 these issues. So if you just want to briefly walk</p> <p>23 me through, what were the issues with the IAP?</p> <p>24 A. Well, specifically, the IAP had changed,</p> <p>25 and there was no administrative notice to any</p>	<p>173</p> <p>1 it was page 7 that was duplicated, but it was page 7</p> <p>2 of 11 and then page 7 of 14.</p> <p>3 Which, again, if you're reading this on</p> <p>4 a phone, on a tablet, you're not looking for page</p> <p>5 numbers; you're looking for content. So I can see</p> <p>6 how that was missed. But then you would have seen</p> <p>7 that it was part of the old IAP.</p> <p>8 So essentially what they did was, to</p> <p>9 save time, they blended the old IAP with the</p> <p>10 current IAP.</p> <p>11 Q. So Frankenstein?</p> <p>12 A. Frankenstein's monster.</p> <p>13 Q. And so that was one of the issues;</p> <p>14 correct?</p> <p>15 Like I said, we'll get to the</p> <p>16 recommendations as well. But one of the</p> <p>17 recommendations was to provide training to everyone</p> <p>18 on this; correct?</p> <p>19 A. Correct. And that has happened. We've</p> <p>20 gotten several IAPs since then, which are all on the</p> <p>21 document that was ...</p> <p>22 Q. Are you proud of the work that you did</p> <p>23 on this case?</p> <p>24 A. In what respect?</p> <p>25 Q. Are you proud of the work product? I</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 mean, are you proud of the outcome of it? Are you 2 proud of the work product?</p> <p>3 A. The -- obviously with this being such a 4 very detailed, long presentation -- 12 hours on the 5 use-of-force board and tactical review board is 6 about six hours longer than anyone has ever been 7 through CIRT -- it was extremely stressful.</p> <p>8 So to say that I'm proud is a 9 double-edged sword, because I try to put my all. 10 That's why I'm still here. I should have left, if I 11 was really smart about it, just for my own mental 12 well-being. But I kind of put it aside and I pushed 13 through, and I'm glad I pushed through, because I 14 really care about this section. I feel like this 15 section is one of the most important pieces of this 16 department, to make sure that our department is 17 getting better.</p> <p>18 Now, the question is am I proud of 19 this report? There are some things that I wish 20 that we would have handled differently as far as 21 some of those contentious interviews that you 22 mentioned.</p> <p>23 My view from outside of our office of 24 people's view on CIRT is usually not very good. And 25 then you hear a lot of the stories or the rumors</p>	<p>174</p> <p>1 there, but that whole section should have been 2 pushed off to IA like we requested. That should 3 have been an internal investigations investigation, 4 and then this should have been just the tactics, 5 decision-making, and training related to the use of 6 force and the officer-involved shooting.</p> <p>7 Q. Okay.</p> <p>8 A. The fact that we were ordered to do it 9 otherwise was stressful because it's outside of the 10 scope of our investigation for the most part.</p> <p>11 So when you say, Are you proud of this? 12 I'm proud of every word that I put on the page. My 13 name is attached to it because I put my everything 14 into it. I'll never say that I gave 90 percent. I 15 always give a hundred percent. So I'm proud of that 16 fact.</p> <p>17 Q. Are you proud of the changes that this 18 report has helped --</p> <p>19 A. Absolutely. I think it's saved lives on 20 both sides of the coin.</p> <p>21 Q. Okay. And so we can kind of skip ahead. 22 Oh, if we can go to page 80.</p> <p>23 Are you the one creating -- what do you 24 call it? The callout boxes?</p> <p>25 A. Where it says "Handgun magazine"?</p>
<p>175</p> <p>1 about this case that circle around about how people 2 are being treated, which is not the case.</p> <p>3 But, again, we have to ask those 4 tough questions. So that's stressful for anybody in 5 our unit.</p> <p>6 Q. What are the rumors about how people are 7 being treated?</p> <p>8 A. Well, you said it yourself, that it 9 seemed like we were fighting on that interview. 10 Which it was a contentious interview because 11 Detective Grimmett cares about his job as well. And 12 if somebody is asking you tough questions about your 13 performance on that job, sometimes people get 14 defensive.</p> <p>15 Q. So are there rumors that the officers 16 involved in this or the officers leading up to this 17 have been treated differently or --</p> <p>18 A. No. No. And every time I see the guys 19 who were involved in this, they're very friendly 20 with me.</p> <p>21 It was -- the section that I believe 22 CIRT should not have handled was the homicide 23 section should have been processed through IA. If 24 there are policy violations that are not related to 25 a use of force -- and I get it, that's why we're</p>	<p>177</p> <p>1 Q. Yes. Is this all your handiwork?</p> <p>2 A. Yes.</p> <p>3 Q. All right. And the one on page 80 for 4 Corvell or -- yeah, CJ.</p> <p>5 A. Yep.</p> <p>6 Q. And so this is where they -- in the -- 7 in the -- in the search -- in the IAP, they were 8 talking about he's seen with a gun. You actually 9 circled it.</p> <p>10 That's not technically a gun; that's 11 just a magazine. Correct?</p> <p>12 A. "Handgun magazine" is what's pictured 13 there. So, again, dealing in factual -- in the 14 factual realm, I can't say for certain that that is 15 a gun. It is the assumption that it is a firearm 16 because it is seated in his pocket. Like, if you 17 put a magazine in your pocket and you place it at a 18 90-degree angle, it's going to fall out of your 19 pocket. It's attached to something, and most likely 20 it is a gun. But that picture right there is 21 depicting a handgun magazine.</p> <p>22 Q. And it seems like you raised -- sorry. 23 If we turn to page 82, it seems like you kind of 24 raise the issue of whether there should have been 25 separate IAPs for the two different locations. And</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 within that, though, you kind of dismiss that, 2 saying, like, no, they're saying it should just be 3 one.</p> <p>4 A. Who? I'm on page 82.</p> <p>5 Q. Yeah, 82. Sorry. This is from at the 6 end of Captain Cole's interview. You quote him as 7 saying, "Uh, so moving forward, multiple locations, 8 separate IAPs for every location."</p> <p>9 And then as we go through though, it 10 seems like you kind of -- not kind of, but through 11 your interviews with other people, they kind of say, 12 No, if it's -- if it's one matter, even if it's 13 separate locations, it should be one IAP.</p> <p>14 A. So that was me asking Captain Cole, who 15 was the SWAT commander at the time, if having 16 separate IAPs for two different locations, even 17 though later it would be beneficial for his section 18 specifically.</p> <p>19 So then when he -- I believe I did 20 Captain --</p> <p>21 Q. Is it Koren?</p> <p>22 A. Koren, yes. He's now Assistant Sheriff 23 Koren.</p> <p>24 But yes, Captain Koren was then asked, 25 and he -- again, I'm doing all this based on the</p>	<p>178</p> <p>1 we turn to page 90, there seems to be some 2 controversy about they split up the team to do 3 surveillance at the same time. If you read the very 4 last of it.</p> <p>5 A. Which? Where are you looking at?</p> <p>6 Q. Sorry. That's fair.</p> <p>7 So this is from Detective Solano. 8 During this interview he was asked if he was 9 concerned.</p> <p>10 And at the very end he says, "To me, it 11 appeared that they were kind" -- "they were 12 trying" -- sorry. Strike it.</p> <p>13 "To me, it appeared that they were kind 14 of trying to knock out two birds with one stone over 15 here on that day. I don't know. They are questions 16 better asked for those guys."</p> <p>17 So it seems like there's some discussion 18 about that they had split up the surveillance team, 19 so when they got burned there wasn't a backup team 20 there?</p> <p>21 A. So that's not something that is 22 commonplace, to have a team fill in if one team gets 23 burnt, especially on those -- that team that does 24 those high-profile surveillances. Once you're 25 burned -- it's an officer-safety thing -- once you</p>
<p>1 notion that I know that Captain Cole had told me 2 that two probably would have been better. And these 3 are just their opinions on what they believe based 4 on their training and experience.</p> <p>5 And their answers are their answers. 6 I mean, Sergeant Scott was on for 33 years, I 7 think he was, before he retired before this board 8 went. Captain Koren has been on longer than me. 9 He's now a sheriff. And Captain Cole is a captain 10 and SWAT commander. So people with a lot of 11 experience, and I was just relaying their opinions 12 on the matter.</p> <p>13 Q. And then turning to page 84. And this 14 is where you seem to start discussing alternative 15 surveillance methods to -- that could have 16 determined who was associated with the South Nellis 17 Boulevard apartment?</p> <p>18 A. Correct.</p> <p>19 Q. And as we discussed before, kind of as 20 you went through, you raised other alternative 21 surveillance options, but Detective Grimmett had not 22 availed himself of any of those; correct?</p> <p>23 A. Correct.</p> <p>24 Q. And then -- and then this is -- I 25 don't know if you remember or not. I read -- so if</p>	<p>179</p> <p>1 believe you were burned anyway, you're not going to 2 replace a team with the possibility of now there's 3 harsh counter-surveillance to where that team could 4 be in jeopardy of safety, if that makes sense.</p> <p>5 Does that answer your question?</p> <p>6 Q. It did. But it seems, based on what 7 Detective Solano is saying, is that -- I mean, he 8 said, "My question is, Why was their team split up 9 that day? They had half their team at Jimmy 10 Durante, the other half at 3050 South Nellis."</p> <p>11 "Like I said, in my six years in 12 Criminal Intel, that never happened. It was 13 always -- was usually -- 'cause the squad's a large 14 squad."</p> <p>15 Do you remember this at all?</p> <p>16 A. I do remember the conversation. When he 17 says "large squad," they're like six, I want to say. 18 That's not a large squad.</p> <p>19 Q. It's the size of your squad.</p> <p>20 A. Exactly. It's definitely not a large 21 squad.</p> <p>22 The idea of what I believe happened was 23 they probably had a tail vehicle or a chase vehicle. 24 In case somebody left the apartment and left in a 25 vehicle, one would then go off with that. So you'd</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">182</p> <p>1 have two detectives and you'd have one still on the 2 house as an eye. 3 However, when you're talking about a 4 one-directional-facing apartment where there's no 5 back door, you don't need more than two to three 6 individuals to get surveillance on that. So I don't 7 understand why he would say that. But that was 8 essentially his answer to the question that I gave 9 him and his explanation. I can't speak to why he 10 believed that if they did things different six 11 years ago.</p> <p>12 Q. Okay. If we turn to page 94, this is 13 just a Google Earth photo.</p> <p>14 Did you pull this from Google Earth?</p> <p>15 A. Correct, yes.</p> <p>16 Q. Did you ever go down to the unit itself?</p> <p>17 A. I was down there at one point.</p> <p>18 Q. Okay. Did you take any photos or --</p> <p>19 A. No.</p> <p>20 Q. What was your -- I probably know the 21 answer, but I'm going to ask it anyway.</p> <p>22 What was your purpose in going down to 23 the unit?</p> <p>24 A. In general, like I said before, the case 25 agent has the option to go out night of or day of,</p>	<p style="text-align: right;">184</p> <p>1 station there. That can get kind of dicey if there 2 are friendlies in there. You don't want to alert a 3 potential homicide investigation of -- that they're 4 getting eyes on. Especially when you don't have 5 them completely locked up of where they're at. If 6 they leave, then you have no other record of where 7 they're at. That becomes a problem.</p> <p>8 I thought about the light pole there 9 because there's power at the light pole, but in 10 Clark County they run on intermittent power. So 11 they actually don't have live power to the actual 12 power unit until it's nighttime. So you would have 13 power, but only for nighttime surveillance on that 14 camera. Which then you'd have to explain the lapses 15 for, you know, 12 to 13 hours of no surveillance on 16 that.</p> <p>17 And still, even if you have a camera on 18 that, you're facing windows. You still don't have a 19 look at the front door or the parking lot. It 20 becomes very difficult to get actual video 21 surveillance of at where they were in 2022.</p> <p>22 Q. And the next five or six pages talks 23 about Major Violators, but we've already covered 24 that.</p> <p>25 So on page 98, it's really SWAT who</p>
<p style="text-align: right;">183</p> <p>1 of an officer-involved shooting, just to kind of get 2 an overview of the entirety of the structure. You 3 can see enough from Google Earth and all these other 4 things, but you really can't get a full picture 5 until you put eyes on it yourself.</p> <p>6 Like I said, this wasn't my case 7 initially, so I was never given the option to go out 8 there day of. So I did make a trip over there just 9 to -- I actually went in the gas station just to see 10 how it was positioned actually based on, like, my 11 two eyes, when we were talking about the options of 12 where to go for TASS and if those were reasonable 13 options.</p> <p>14 Q. And what were your personal observations 15 when you went down there?</p> <p>16 A. So not reflective of the report? Just 17 of what I saw from an officer's -- reasonable 18 officer's standpoint?</p> <p>19 Q. Correct.</p> <p>20 A. It was a difficult situation as far as 21 surveillance goes.</p> <p>22 I know from previous operations I've 23 been a part of when I was not in CIRT that you would 24 need either permission or a court order to affix 25 your cameras to a business, which would be the gas</p>	<p style="text-align: right;">185</p> <p>1 dictates the way that -- they're the ones who decide 2 how the warrant is served; correct?</p> <p>3 A. Correct. I believe one of the quotes in 4 here was a specialized unit is not going to dictate 5 my tactics. I forgot who said that, but it was an 6 operator or -- the information that they get from 7 the IAP is supposed to give you an idea of all the 8 threats and let you place yourself into the 9 different boxes that you have as far as your policy 10 and procedures goes.</p> <p>11 Q. Okay. So -- and I guess we haven't 12 talked about that.</p> <p>13 So that's really the purpose of the IAP 14 then?</p> <p>15 A. Yes. To give a detailed synopsis of 16 what you're looking for, what your threats are.</p> <p>17 In this case, the apartment was 18 identified to Wattsel and Fisher. That's all the 19 operators have to work on. They're not going to go 20 back and fact-check that. They're not going to go 21 do their own investigation. That is going to be 22 information that is known to the SWAT operators.</p> <p>23 They're looking for things like 24 firearms. They're looking for any mentions of 25 counter-surveillance, like cameras, bars on the</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>186</p> <p>1 window, things like that.</p> <p>2 Q. Okay. And then now turning to</p> <p>3 page 101, here it talks about the change of the</p> <p>4 exigency box.</p> <p>5 Because as we go through these different</p> <p>6 iterations, they not just incorporated some new</p> <p>7 pages in, but they also changed the exigency box;</p> <p>8 correct?</p> <p>9 A. Uh-huh. Correct.</p> <p>10 Q. And, again -- well, not again, but</p> <p>11 there's no re-signing of the IAP; it's just the</p> <p>12 same signature page attached again and again;</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. And there's no context under which that</p> <p>16 complies with LVMPD policy; correct?</p> <p>17 A. So the -- well, can you rephrase? The</p> <p>18 context of?</p> <p>19 Q. LVMPD policy doesn't have -- LVMPD</p> <p>20 policy doesn't allow -- there's nothing in LVMPD</p> <p>21 policy that would enable, where a form has to be</p> <p>22 signed by certain individuals, to just reuse the</p> <p>23 signature page again and again; correct?</p> <p>24 A. Correct. There's nothing there that</p> <p>25 says that that is either acceptable or not</p>	<p>188</p> <p>1 reports is out for whatever reason, don't they have,</p> <p>2 like, a backup person to sign it?</p> <p>3 A. You'd have to -- that might be more of</p> <p>4 a -- like captain-to-captain thing. That's not</p> <p>5 something that's set in policy.</p> <p>6 I know that there's coverage that</p> <p>7 happens between captains, lieutenants in different</p> <p>8 sections, but that's a little bit over my purview,</p> <p>9 as far as covering for each other and assignments on</p> <p>10 who's covering.</p> <p>11 If the SWAT commander and the lieutenant</p> <p>12 who is covering homicide made that determination</p> <p>13 that they were okay with the signatures, and in this</p> <p>14 instance that was their decision -- again, we made</p> <p>15 that something that we changed to make sure that</p> <p>16 doesn't happen like that again. Doesn't mean it was</p> <p>17 acceptable or unacceptable, but it just means we</p> <p>18 needed to fix that problem.</p> <p>19 Because at the end of the day I don't</p> <p>20 think that by him saying it was a legitimate</p> <p>21 signature made the document illegitimate. He was</p> <p>22 saying that that was still their signature, and it</p> <p>23 was a legitimate document based on the fact he</p> <p>24 talked to them, if I recall that.</p> <p>25 Q. And then SWAT just goes by, to kind of</p>
<p>187</p> <p>1 acceptable.</p> <p>2 Q. Okay. In fact, Captain Cole defended</p> <p>3 that position; correct?</p> <p>4 A. I believe so. Can you tell me what page</p> <p>5 that was on, where he -- a lot of these interviews</p> <p>6 kind of blend together in my head a bit.</p> <p>7 Page 104?</p> <p>8 Q. Correct.</p> <p>9 A. So yeah. Based on his conversations</p> <p>10 with Captain Koren and Lieutenant Johansson, and he</p> <p>11 believed they were legitimate signed documents even</p> <p>12 though they were from a previous document.</p> <p>13 And I guess one of the caveats to that</p> <p>14 would be the fact that Captain Koren was on COVID-19</p> <p>15 and couldn't physically sign the new pages per, I</p> <p>16 guess, our policy. I think we implemented a policy</p> <p>17 of -- contact policy when COVID was going around</p> <p>18 that said that he couldn't have any contact with</p> <p>19 individuals. And we didn't have any documentation</p> <p>20 for electronic signatures.</p> <p>21 Q. That's since been implemented though;</p> <p>22 correct?</p> <p>23 A. I believe so.</p> <p>24 Q. Okay. Is there not, like -- if somebody</p> <p>25 is out, like if somebody needs to sign one of these</p>	<p>189</p> <p>1 do a quick -- I mean, they do their own</p> <p>2 recognizance, but it's pretty brief; correct?</p> <p>3 A. It's not for people. It's for</p> <p>4 structure. So they need to know if they can fit</p> <p>5 armor back there. They need to know if there's any</p> <p>6 counter-surveillance or countermeasures that are a</p> <p>7 part of that door. Which in this case they ended up</p> <p>8 missing because there were individuals that were</p> <p>9 counter-surveilling or just hanging outside.</p> <p>10 Q. Well, they didn't -- okay.</p> <p>11 A. But the -- their surveillance is more</p> <p>12 along the lines of making sure -- did you need me</p> <p>13 to stop?</p> <p>14 Q. No.</p> <p>15 A. Sorry.</p> <p>16 Their surveillance was to make sure that</p> <p>17 they could -- where they were going to enter from;</p> <p>18 where they're going to put their Sierra units, which</p> <p>19 are snipers; if they were going to deploy snipers or</p> <p>20 if they were going to be standing by as observers.</p> <p>21 One of those things to look for was a</p> <p>22 brass wrap, which in this case, like I said, was not</p> <p>23 noted because the door was open the entire time.</p> <p>24 And had Officer Hoskins, who was the forward</p> <p>25 observer on that surveillance operation, stopped and</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>190</p> <p>1 checked that, they would have been blown and 2 potentially he would have been in a compromising 3 situation with three suspects. 4 Q. Okay. 5 A. Also operating on the fact that to their 6 knowledge these -- anybody who was there is a 7 possible armed homicide suspect. So he has no body 8 armor. He's dressed in basketball shorts and a 9 T-shirt. 10 Q. All right. So then we'll skip ahead 11 to page 110, where it starts discussing "SWAT Makes 12 a Plan." 13 Do you come up with these headings? 14 A. I do. 15 Q. Okay. And so this is all -- sorry. If 16 we turn to page 111, this is all in italics, so this 17 is all quoted -- this is all quoting from the SWAT 18 Section Manual; correct? 19 A. Correct. 20 Q. I noticed in here -- was there any part 21 of the SWAT Section Manual that gave any kind of 22 training or outline to parameters of "knock and 23 announce"?</p> <p>24 A. I can't recall. I feel like there was a 25 section on there. But we were specifically dealing</p>	<p>192</p> <p>1 is confirmed all individuals are out. 2 Q. Okay. And looking down at the last 3 passage from the SWAT manual that you quoted here, 4 it said, "When utilizing a CET, the team leader will 5 ensure that the associated 'Knock and Announce' 6 tactic allows for a 'reasonable amount of time' 7 based upon the circumstances of the warrant." 8 Then it cites Wilson versus Arkansas at 9 1995, USSC. 10 So that's directly from the SWAT manual; 11 correct? 12 A. Correct. 13 Q. But earlier it says the purpose of the 14 CET is "meant to surprise and overwhelm the 15 suspects"; correct? 16 A. Correct. And, yes, I acknowledge that 17 that is a direct contradiction. 18 Q. And so turning to page 112, another 19 section that you pulled out of the "no knock" 20 search warrant -- sorry. Another section that 21 you pulled out of the LVMPD SWAT Section Manual on 22 "No Knock" states, "No-knock search warrants will 23 only be authorized for felony offenses that involve 24 a significant and imminent threat to public safety 25 and will not be used for the preservation of</p>
<p>191</p> <p>1 with the CET because that's what they chose. 2 I do believe there was an aspect on that 3 iteration of "knock and announce," but the CET was 4 the method that they chose on that, so that's what 5 we focused on. 6 Q. Okay. And so just for -- it's -- just 7 for clarity of the record, we've got two different 8 types of entrance in this case. 9 We've got what's called the CET, which 10 is the controlled entry tactic, or the SACO, 11 S-A-C-O, which is the "surround and callout"; 12 correct? 13 A. Correct. 14 Q. Very briefly, tell us what's the 15 difference between a CET and a SACO. 16 A. Well, a SACO is exactly what it is. 17 It's "surround and callout." You surround the -- in 18 this case the apartment, all of the exits that you 19 could get. A lot of times you'll do evacuations at 20 that point. That way this is being treated as a 21 barricade until that individual comes out of the 22 apartment. And then you call that person out to 23 whatever unit you have, whether it be an armored 24 vehicle, operators with tactical shields for cover. 25 They call them out and secure the residence after it</p>	<p>193</p> <p>1 evidence." 2 As we sit here today, at the time that 3 this warrant was served, this was for property only; 4 correct? 5 A. Correct. 6 Q. And is that preservation of evidence? 7 A. I'm sorry. What's the question? 8 Q. So for property only, that means, like, 9 you're seeking evidence; right? 10 A. Correct. 11 Q. Okay. And as we sit here -- sorry. 12 As we sit here today, if the policy is 13 that a "no knock" warrant will not be used for a 14 property-only search warrant, they could not have 15 obtained a "no knock" warrant for this search 16 warrant; correct? 17 A. Correct. And they did not get a 18 "no knock" warrant. They did not receive that. 19 Q. Right. But if it was suggested that 20 they ought to have as an alternative, that's not a 21 viable alternative; correct? 22 A. No. Unless you have the body of the 23 individual on that search warrant. 24 An alternative to that would be if there 25 was probable cause to arrest Wattsel or Fisher for</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>194</p> <p>1 that homicide and you had those arrest warrants in 2 hand.</p> <p>3 The difference on this would be they 4 had an arrest warrant on hand for the gang case 5 that we mentioned previously for Corvell Fisher and 6 Wattsel -- sorry, Wattsel Rembert with that 7 MP5-style pistol.</p> <p>8 Q. But not for the search warrant for the 9 property related to the homicide; correct?</p> <p>10 A. Correct. So they had -- they had a -- I 11 guess the distinction would be they told the SWAT 12 that there was an arrest warrant for Wattsel -- and 13 I believe that was in the IAP -- for the gang case. 14 So there was a body warrant for him. However, it 15 was not for the same case that they were referencing 16 for the homicide.</p> <p>17 Q. How often are "no knock" warrants 18 issued?</p> <p>19 A. I can't remember any since I've been up 20 at CIRT. And I've never been a part of one in my 21 operation.</p> <p>22 Q. Okay. So it's fair to say that they're 23 fairly uncommon; is that correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And so, Justin, if we turn then to</p>	<p>196</p> <p>1 SACO; correct?</p> <p>2 A. That was Lieutenant O'Daniel's 3 explanation.</p> <p>4 Q. Okay. But as we sit here today, with a 5 property-only search warrant, they would not get 6 authorization to do a CET; correct?</p> <p>7 A. Correct. But we don't do CETs anymore, 8 per our recommendation.</p> <p>9 Q. They don't do them at all?</p> <p>10 A. No. Now -- and, again, I'm going off 11 memory, but I believe we went to a "knock and 12 announce" and a surround and -- like a hold. 13 Essentially what it is is you make entry 14 to the structure. However, you hold, and there's a 15 viable area of entry. You can then move your team 16 or robots through at a slower pace to clear the 17 residence of any people or threats and subsequently 18 move through the process.</p> <p>19 I think CETs are only used now for 20 crisis entries or "no knock" warrants, as part of 21 our recommendation.</p> <p>22 Q. Okay. Thank you.</p> <p>23 And so this -- okay.</p> <p>24 A. "Breach and hold."</p> <p>25 Q. "Breach and hold"?</p>
<p>195</p> <p>1 page 113.</p> <p>2 And is this another Google Earth?</p> <p>3 A. This is.</p> <p>4 Q. Okay. And what is this a Google Earth 5 image of?</p> <p>6 A. That would be the apartment complex of 7 3050 South Nellis Boulevard. And I specifically 8 have highlighted with an arrow Apartment 1125, which 9 is on the northwest corner of that building that is 10 centered in the photograph.</p> <p>11 Q. Okay. And this was -- is this -- is 12 this to kind of depict -- because, you know, we 13 talked -- there's so much discussed in the -- in the 14 interviews from the different officers that it's 15 this kind of weird angle; is that correct?</p> <p>16 A. Yes. It's very oddly placed into that 17 piece of property where I don't understand why 18 they would do it at an angle like that just 19 practically, which allows no room for the size of 20 the BearCats, the armored vehicles that LVMPD has, 21 to go through there. Practically you don't have the 22 room to fit those armored vehicles through those 23 openings.</p> <p>24 Q. Okay. And so that was part of the 25 foundation of the decision to do a CET instead of a</p>	<p>197</p> <p>1 A. "Breach and hold" is what it's called.</p> <p>2 Q. And so how would -- and so if you can 3 kind of -- because I think I understand what you 4 mean, but if you can kind of walk me through. How 5 would a "breach and hold" -- let's say they're doing 6 a "breach and hold" on this unit today. Right? 7 They're going to go serve this -- whenever -- 8 tonight.</p> <p>9 How would the "breach and hold" -- 10 looking at -- I don't know if this is a good use 11 of this, but how would the "breach and hold" 12 look now?</p> <p>13 A. It would be very similar to this, 14 without the number of officers. You'd either have a 15 water charge on the door, and you would blow that 16 door after there's already been announcements. You 17 would give the person -- essentially it would start 18 as a "surround and callout," and then it would move 19 to a "breach and hold."</p> <p>20 So if there was either no communication 21 with a potential suspect in there, whether they 22 escaped before we were able to get a perimeter or 23 they're just not responding -- sometimes this 24 happens on individuals who are barricaded and end up 25 committing suicide, where obviously we're not going</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 to have communication with somebody who shot 2 themselves. 3 So when you "breach and hold," you 4 breach the door, whether it be manual or with a 5 water charge, and then it's more announcements to 6 try to get that person to come to the door 7 peacefully. 8 If there's no communication and there is 9 believed to be the subject's down or not in there, 10 then there's slow, methodical clearing with either 11 operators or some type of drone, whether it be 12 robots -- I think we have like a robot dog now -- 13 and aerial drones that can maneuver inside of 14 apartments to get a visual of the area. 15 And then if it's determined to be clear, 16 the operators will slow and methodically clear the 17 apartment or house or whatever structure. 18 And that is, again, off of memory. 19 That's not citing the new SWAT manual that was 20 changed after this. That is my interpretation as 21 Justin Roth as he sits in front of you from just 22 memory. 23 Q. I get it. But what I can rely on, 24 Justin, is that the policy -- is the policy was 25 changed as a result of this incident; correct?</p>	<p>198</p> <p>1 A. Yes. 2 Q. I don't think it alleviated any of the 3 confusion, did it? 4 A. What do you mean, the "confusion" 5 specifically? 6 I'm just trying to get on the same page. 7 Q. Correct. 8 A. Did the word "never" being taken out 9 alleviate confusion? 10 Q. So if you -- it's from Lieutenant 11 O'Daniel's email that she wrote. It's saying -- 12 and this is midway through -- "Now that the 13 investigation is concluded, we will make changes 14 to SOP and ensure there is clarity with the 15 explanations so that there is no misrepresentations 16 to outside entity and internal players. Attached is 17 some of the recommended changes and the 18 clarifications that will be added to SOP." 19 A. Okay. 20 Q. And ultimately the recommendations -- 21 according to what you have in this report, the 22 recommendation was adopted? 23 A. Correct. 24 Q. Okay. There does seem to be -- if we 25 then turn to page 117. Because it does seem that</p>
<p>199</p> <p>1 A. The manual was changed. 2 Q. Sorry. The manual was changed? 3 A. Correct. 4 Q. And then kind of going on the next few 5 pages, you talk about there was a -- there was a 6 slight modification of the language of the policy 7 between -- I think it was 2020 and 2021. 8 A. '21 and '22, I believe. 9 Q. Okay. And that was the inclusion of the 10 word -- what was that -- "Using a controlled entry 11 tactic for the sole purpose of recovering narcotics 12 or property will never be considered as an 13 acceptable practice." 14 A. What page are you on? 15 Q. I'm sorry. Page 116. It's the last 16 sentence in the first full paragraph at the top of 17 the page. 18 A. Okay. I see it. 19 Q. That was the language that was -- that 20 was changed? 21 A. Correct. 22 Q. That wasn't the one that was in force at 23 the time of this incident. 24 And then if we -- and so there was a 25 minor change; correct?</p>	<p>201</p> <p>1 Deputy Chief Larkin was not aware of the change? 2 A. That was their statement, yes. And 3 there was no -- there was no checks and balances put 4 in place electronically to do that. 5 As we were in the scenario we were in, I 6 want to say -- I forget when this interview took 7 place, but it had to be after August, I'd say maybe 8 September, October -- we were implementing a new 9 policy manual, virtual policy manual. Any changes 10 that would be done would have to be approved with 11 electronic signatures. And this is, of course, 12 after the fact. 13 So any changes now that are done through 14 our department, whether it be a small change to a 15 word or two, has to be done through -- I think it's 16 called PowerDMS. And that information -- so that 17 wasn't done at the time, so we had no way to know if 18 that was the case. But that was her statement. 19 Q. On 118 we start talking about the NFDDs, 20 which is the noise/flash diversionary devices? 21 A. Correct. 22 Q. And there were -- do you recall which 23 NFDDs were used on this warrant? 24 A. Yes. It was a 9-bang, a handheld 25 grenade essentially.</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 It's not a grenade in the fact of it has 2 explosives that will injure. It's designed not to 3 injure or fragment. It's designed to have a loud 4 noise and loud flashes.</p> <p>5 And then a stun stick, which is 6 essentially the same thing; however, it's on a pole 7 that is inserted into a house and is designed to 8 disorient individuals inside of a room.</p> <p>9 Q. And so if we can just quickly look at 10 the layout of the apartment, 1125.</p> <p>11 A. Yep.</p> <p>12 Q. If we look at this area right here, 13 you've got this large -- you've got this kind of 14 oval, and that represents Mr. Williams; correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Do you want to -- if you can, for 17 the camera --</p> <p>18 A. Point to it?</p> <p>19 Q. Yes, please.</p> <p>20 A. Right here (indicating).</p> <p>21 Q. Over here to the side we have 22 Officer Rothenburg, and he was the one that 23 inserted the -- no?</p> <p>24 A. No. Officer Bertuccini did, who is the 25 badge that is directly north of his position, on the</p>	<p>202</p> <p>1 "Prior to deploying NFDDs, personnel 2 shall consider available intelligence information 3 and circumstances. This intelligence information 4 should include the presence of children, elderly 5 persons, innocent individuals, and the risk of 6 injury occurring to those not involved in the 7 arrest."</p> <p>8 And so as we sit -- one of the facts 9 that you outlined in -- that was outlined in the 10 CIRT report is that when Lieutenant O'Daniel 11 confirmed or authorized the request for this, 12 they had not ruled out presence of children; they 13 had not ruled out presence of elderly person; they 14 had not ruled out presence of innocent individuals; 15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. This was, in fact, qualified as a 18 flophouse, so it was known that there was people 19 coming and going; correct?</p> <p>20 A. Correct.</p> <p>21 Q. So then the last paragraph on page 120, 22 if you -- it states, "Based on the facts, the SWAT 23 Team did not have actionable intelligence to 24 consider the use of any NFDD due to the fact that 25 there was only 90 minutes of surveillance completed</p>
<p>1 exterior.</p> <p>2 Q. Okay. So Officer Rothenburg held the 3 shield?</p> <p>4 A. Correct.</p> <p>5 Q. And then Officer Bertuccini is the one 6 that inserted the stick?</p> <p>7 A. Correct.</p> <p>8 Q. And then looking at the diagram, the 9 window is right next to the sofa that Mr. Williams 10 was on; right?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And just -- we talked about it 13 briefly in the beginning, but the stick was inserted 14 through the window; correct?</p> <p>15 A. Yes, it was.</p> <p>16 Q. On page 119 you quote the Section 11.01, 17 NFDD. You again quote from the SWAT Section Manual, 18 and it reads -- this is your quotation -- 19 "Diversionary devices are designed to gain 20 compliance, distract, or disorient an individual."</p> <p>21 And that's the purpose; correct?</p> <p>22 A. Correct.</p> <p>23 Q. And so then if we then go to page 120, 24 again you're quoting from the SWAT Section Manual. 25 And I'll just read it to you.</p>	<p>203</p> <p>1 where only one subject was observed."</p> <p>2 And so that is -- that is a part of 3 later the CIRT conclusion; correct?</p> <p>4 A. That is a part of the CIRT conclusion, 5 yes. Specifically for Lieutenant O'Daniel's use of 6 discretion.</p> <p>7 Q. And then if you want to turn the page 8 to 123.</p> <p>9 A. Okay.</p> <p>10 Q. And the next few pages, what are 11 these -- what are these pictures of?</p> <p>12 A. This is a picture of Officer Hancock's 13 shock lock.</p> <p>14 A shock lock is a device that is used 15 for defeating dead bolts or any type of locking 16 mechanism. Essentially pushed up to the door and 17 fired, and it is a non-fragmenting round -- or a 18 fragmenting round, I believe -- minimal amount of 19 fragmentation is what is designed to penetrate the 20 locking mechanism.</p> <p>21 Q. And if we turn to page 124.</p> <p>22 A. Back?</p> <p>23 Q. Yes, please. Sorry.</p> <p>24 A. I am without pages 123 and 124.</p> <p>25 Q. I can't give you 123, but I'll give you</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">206</p> <p>1 my 124. And if you want to read that highlighted 2 portion.</p> <p>3 A. Sure. Out loud?</p> <p>4 Q. Sure. Yes, please.</p> <p>5 A. "Multiple SWAT operators remembered 6 hearing Detective Grimmett brief the group that 7 there was probable cause to arrest Wattsel. Some 8 SWAT operators perceived this statement to mean 9 they had probable cause for a homicide. However, 10 Detective Grimmett clarified that he meant there was 11 probable cause to arrest Wattsel from a shooting 12 being investigated by GVB" -- which is the Gang Vice 13 Bureau -- "detectives."</p> <p>14 Q. When you say that he clarified, you 15 mean that he clarified that later to the CIRT; 16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And then if you turn to page 128, 19 could you please -- it starts the discussion here, 20 but can you please explain to me the issue with the 21 amount of training Sergeant Backman had received?</p> <p>22 A. So that was essentially the operators -- 23 in the section of the manual there is a lesson plan, 24 essentially, of how to indoctrinate new SWAT 25 operators and SWAT supervisors. And part of that is</p>	<p style="text-align: right;">208</p> <p>1 v. Banks here; is that correct?</p> <p>2 A. The second paragraph down?</p> <p>3 Q. Yes. I'm sorry. Yes.</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And one of the things that you 6 included in this was the discussion of exigency in 7 terms of entering after knocking. And in the 8 language that you included from the case 9 United States versus Banks it states, "Once the 10 exigency had matured, the officers were not bound to 11 learn anything more or wait any longer before 12 entering, even though the entry entailed some harm 13 to the building."</p> <p>14 Now, this case dealt with the exigency 15 involved in destroying cocaine; correct?</p> <p>16 A. I believe so. I'm familiar with the 17 case, but I'm not familiar with the intricacies in 18 the case. However, I was utilizing it for purposes 19 of entry time and reference points for that and 20 comparables. I didn't dig too deep into the actual 21 cases themselves, if that answers your question.</p> <p>22 Q. These cases were more than likely 23 provided by Mr. Bandiero; correct?</p> <p>24 A. Yes.</p> <p>25 Q. And so if we go then to page 134,</p>
<p style="text-align: right;">207</p> <p>1 to learn in training scenarios and also be a part of 2 different positions within the stack during live 3 operations.</p> <p>4 Since then, I believe that has been 5 changed to include more static training prior to 6 being involved in live action when you are 7 relatively new.</p> <p>8 I'm not sure how that -- how that goes 9 through with operators who have tested for sergeant, 10 having already been operators on SWAT. I can't 11 speak to their manual of how it reads, but I know it 12 was changed to where there was more time of static 13 training.</p> <p>14 Q. But to confirm, at the time that 15 Sergeant Backman was in charge of this search 16 warrant, of executing this search warrant, he had 17 not completed SWAT school; correct?</p> <p>18 A. I believe he had not completed SWAT 19 school.</p> <p>20 Q. Yeah, sorry. He hadn't attended it at 21 all; correct?</p> <p>22 A. Yes.</p> <p>23 Q. If we can please turn to page 133.</p> <p>24 So you are citing -- I believe that 25 you're citing directly from the case United States</p>	<p style="text-align: right;">209</p> <p>1 there's also a section, yeah -- last sentence. "The 2 Supreme Court has also held that a 15- to 20-second 3 wait after police officers announced their presence 4 was reasonable under the Fourth Amendment and 5 Section 3109."</p> <p>6 So as we talked about it at the very 7 beginning of the -- of the deposition, the amount of 8 time that you have counted the seconds from when 9 they start -- sorry. Strike that.</p> <p>10 The way that the seconds have been 11 counted in this CIRT report is from the time the 12 officers begin making their announcement; correct?</p> <p>13 A. I believe so.</p> <p>14 Q. So then going down to the lower part of 15 the page -- and I'll hand this to you, and I'll ask 16 you to read the highlighted portion at the bottom of 17 page 134.</p> <p>18 A. "By conducting a CET to surprise and 19 overwhelm the occupants of the structure, it 20 inherently contradicts the 'knock and announce' rule 21 which requires officers to wait a reasonable amount 22 of time set forth by the United States Supreme Court 23 case law and Nevada Revised Statutes."</p> <p>24 Q. And that's later -- that's later 25 outlined in the conclusions of this report as well;</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. And that was -- that conclusion was come 4 to based on the facts that you compiled, the round 5 tables you did, and discussions with the subject 6 matter experts; correct?</p> <p>7 A. Correct.</p> <p>8 Q. I'm going to ask you -- page 136. I'm 9 going to ask you to read the part that is 10 highlighted in pink.</p> <p>11 A. "Six seconds elapsed from the time of 12 the first announcement by Sergeant Backman, to the 13 western window being broken out, the blinds being 14 cleared, and the stun stick being inserted. Three 15 seconds later, Officer Hoskins began to utilize the 16 ram on the front door."</p> <p>17 Q. And as I went through the CIRT 18 investigation report, there was an issue with the 19 stun stick, the blinds being up there; correct?</p> <p>20 A. Correct.</p> <p>21 Q. They couldn't really see -- well, not 22 really. They could not see what was on the other 23 side of the window; correct?</p> <p>24 A. No.</p> <p>25 Q. So at the time that they inserted that,</p>	<p>210</p> <p>1 And based on the content of your -- 2 based on the content of your report, it seems like 3 there was controversy about whether or not they 4 should have called the tactical when the brass wrap 5 was identified; correct?</p> <p>6 A. Controversy between two SMEs, two sides 7 of the table essentially. However, it's not very 8 controversial when it comes to looking and analyzing 9 the specifics of the case. Their manuals say it's a 10 judgment call.</p> <p>11 And when I interviewed every operator on 12 that stack, they said that they felt comfortable not 13 calling a tactical at that point. And that's what I 14 have to go off of as an investigator is their 15 judgment call based on the fact that they see -- 16 they recognize that there's a brass wrap there, 17 they're seeing Officer Hoskins hit the door, and 18 they recognize that there's daylight is what they -- 19 a lot of them said, and that door is giving. So 20 they believed a tactical did not need to be called.</p> <p>21 And we can have SMEs say yes/no to that, 22 but when we're talking about individuals' judgment, 23 that can't be something that -- you can't speak on 24 my judgment as long as it's something that is 25 outlined in the manual. Like all italics should be</p>
<p>211</p> <p>1 they were not aware that the window was right here 2 and Mr. Williams was right here (indicating); 3 correct?</p> <p>4 A. Correct. Did not know that at the time.</p> <p>5 Q. And according to -- as you've cited, 6 according to LVMPD policy within the CIRT report, 7 they needed to be able to see in that window to 8 insert that stun stick; correct?</p> <p>9 A. Correct.</p> <p>10 Q. Do you think that's a training failure, 11 that they didn't do that?</p> <p>12 A. Yeah, I would say so. They are trained 13 to do a "rake and break" is what it's called. So 14 rake the window and the blinds and then insert.</p> <p>15 Now, the camera is very dark on there 16 just because of the time of day and the resolution 17 of our body-worn cameras. I can't remember if 18 Officer Rothenburg or Bertuccini, when we 19 interviewed them, said that they did conduct a rake 20 on that. That would have been the procedure is to 21 clear it and then insert it. I'd have to look back 22 at their interviews again. But yes.</p> <p>23 Q. And then if we then turn to page 137, 24 down at the bottom of the page the issue then comes 25 up to the brass wrap.</p>	<p>213</p> <p>1 in -- all quotes should be in italics, if your 2 judgment is I shouldn't do that but it says so in my 3 briefing --</p> <p>4 Q. Yeah. And I think, Justin, you tell me 5 if you understand the difference or not. The 6 difference is when you and I are talking -- and I'm 7 a lawyer. I write things all the time. But when 8 you and I are kind of going through the report -- 9 and it's a lengthy report. To be honest, I don't 10 think I could write a 200-page report and not have 11 some formatting errors in it, despite my best 12 efforts.</p> <p>13 A. Sure.</p> <p>14 Q. But there's a difference between that -- 15 that's a subjective mistake -- and then the issues 16 about mistakes that then impinge on somebody's 17 constitutional rights for unfair search and seizure. 18 Right? So it's like we're talking about a different 19 thing here.</p> <p>20 So, you know, as you go through -- you 21 know, it's like, okay, well, the purpose of the stun 22 stick is to distract and disorient. Correct? And 23 at the same time, we've got banging on the door that 24 is supposed to be giving somebody their 25 constitutional right to know that it's the police</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">214</p> <p>1 coming through the door. 2 You understand -- I mean, you -- you 3 have outlined in this very report that these seem to 4 be in conflict; correct? 5 A. I've said it about an hour ago, that it 6 was a direct contradiction, and that was our finding 7 in the report. 8 Q. Okay. 9 A. I was more speaking on the tactical call 10 of that it wasn't so controversial as far as there 11 are documents saying that you will call a tactical 12 at this point or this point. It is a judgment call 13 based on the operators who are at the door. 14 Q. And if they had called a -- let's just 15 do an alternative. Right? So they call a tactical. 16 Then they pull back and they do a surround and 17 call -- they do a SACO; right? 18 A. Uh-huh. 19 Q. So a SACO is possible? 20 A. That would be their procedure, yes. 21 Q. Okay. And so the "rake and break," just 22 so that I understand a little bit better, it's to 23 break open -- they take off -- I think they took off 24 a screen; correct? 25 A. I believe so, yeah.</p>	<p style="text-align: right;">216</p> <p>1 There was no intention for any officer or operator 2 to move through that window, period. 3 Q. But we don't know if that was 4 Mr. Williams' perception of that; correct? 5 A. Sure. I don't know his perception of 6 anything. 7 Q. And as we even see in this photo right 8 here, the broken -- I mean, this is a different 9 vantage point, but the broken-out window was right 10 next to the sofa Mr. Williams was on; correct? 11 A. Yes. 12 Q. And that was from page 144 of the CIRT 13 report. 14 And then for the next few pages -- I 15 mean, having reviewed this, the next few pages are 16 talking about the officers' awareness of the 17 backdrop, which we're going to skip over. 18 But what I do want to talk about is -- 19 if we go to page 148. 20 A. Okay. 21 Q. And I think that this is -- on page 148 22 it says "Officer Rothenburg." And then it says, 23 "When the stun stick was placed in the window, 24 the first few ignitions of the distracts caused a 25 large puff of smoke in the interior of the living</p>
<p style="text-align: right;">215</p> <p>1 Q. And then they break the window with the 2 actual stick; correct? 3 A. I believe so, yeah. That's the "rake" 4 part of that, yeah. 5 Q. Then they're supposed to pull off the 6 blinds too; correct? 7 A. With it, yes. 8 Q. So that's an entry into the unit; 9 correct? 10 A. Yes. 11 Q. And then -- 12 A. I'm sorry. So I will say that the entry 13 into the unit is the entry of the stun stick into 14 the apartment utilizing our tools. 15 The entry into the unit is not breaking 16 the glass and pulling it out. I would say the entry 17 of the stun stick is entry to the unit. 18 Q. But somebody could have stepped through 19 that broken window; correct? If it's done the way 20 it's supposed to be done, where the screen is taken 21 off, the window is broken, the blinds are pulled 22 down -- if we're looking at page 144 -- and this is 23 well after the fact, but somebody could step through 24 that window; correct? 25 A. Sure. But the -- somebody could have.</p>	<p style="text-align: right;">217</p> <p>1 room." 2 And so this was based on not -- I mean, 3 not just your review of the body-worn camera 4 footage, but also Officer Rothenburg's kind of 5 recitation of what he perceived at the time; 6 correct? 7 A. Yes. That was his statement, that he 8 could not see initially because of the smoke, and 9 then once the door was breached, it kind of vacuumed 10 out to where he could see more. 11 Q. Okay. But he had tried to turn a 12 flashlight on, and he turned it off immediately; 13 correct? 14 A. I believe so. 15 Q. Okay. So the remainder is just the 16 investigation -- is kind of the post-shooting 17 investigation, until we get up to about page 170. 18 So we'll skip through that. That's your recitation 19 of facts about the post-scene analysis. 20 A. Okay. 21 Q. And turning to page 169, it discusses 22 "The Administrative Analysis of the Use of Deadly 23 Force." 24 And just to confirm, from an 25 administrative perspective, that's different than</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>218</p> <p>1 the criminal perspective, but also from an 2 administrative perspective it was found that the 3 officers' use of force was reasonable based on what 4 they were perceiving at the exact time; correct? 5 A. Correct. 6 Q. And so a lot of the report -- the 7 remainder of the report is the specific dialogue 8 about the conclusions. So rather than walk through 9 that, because you've done such an excellent job of 10 creating this table at the end, I would just rather 11 go forward to the table, the conclusion section, and 12 we can talk about those. 13 Unless there's anything in there that 14 you really want to highlight for me. 15 A. So I guess it will just be questions 16 based on what you have to respond to that -- to the 17 actual conclusion table itself. Because the 18 conclusion table is legitimately the last paragraph 19 of every conclusion. It does not encapsulate the 20 entirety of the body of the conclusion. 21 Q. As we go through the conclusions, we can 22 certainly loop back to any things that you think are 23 necessary. 24 A. Okay. 25 Q. My understanding of what you testified</p>	<p>220</p> <p>1 A. Yes. 2 Q. Okay. There was an issue with the IAP 3 kind of being put together, cobbled together, to 4 have its final version; correct? 5 A. Yes. 6 Q. We haven't talked about it yet, but also 7 O'Daniel, while she approved the use of the NFDDs, 8 she was actually out on COVID during that time; 9 correct? 10 A. Correct. 11 Q. Sergeant Backman had not attended SWAT 12 school; he had only done 29 days of essentially 13 on-the-job training. Correct? 14 A. Yes. 15 Q. And there was somebody else out on 16 either vacation or -- 17 A. Sergeant Findley. 18 Q. Okay. And that whole lead-up, had you 19 ever -- I mean, those are a lot of, kind of, off -- 20 those are a lot of -- strike that. 21 Those are a lot of unusual circumstances 22 related to the execution of a single warrant. Would 23 that be fair to say? 24 A. I think COVID put a strain on a lot of 25 aspects of how we did things, just on resources</p>
<p>219</p> <p>1 to at the beginning of this deposition was that you 2 had specifically reviewed the conclusions in 3 preparation for today's deposition. 4 A. Correct. 5 Q. Did you review the dialogue -- because 6 you said you actually didn't review the whole 7 report. 8 Did you review the dialogue portion of 9 the conclusions? 10 A. Yes. But, again, we're talking about 11 50 pages of a lot of stuff that runs congruent with 12 each other. So to get exact quotes and exact 13 recollection. 14 Q. Well, here's what we'll do. Some of the 15 conclusions I think are somewhat benign or -- you 16 know, they're benign. So those ones we can kind of 17 go through. And the ones -- the more ones that are, 18 you know, highly relevant for this case, we can then 19 loop back to the full discussion. 20 A. Works for me. 21 Q. Just a couple of facts I wanted to lay 22 the groundwork first. 23 There were -- some of the facts you laid 24 out so far is there were some discrepancies with the 25 search warrant; correct?</p>	<p>221</p> <p>1 alone and having a lot of people out. This was 2 different times for a couple of years when we dealt 3 with the pandemic from an operational standpoint. 4 So there were a lot of oddities with that. 5 Q. Well, the search warrant oddity wasn't 6 related to COVID; correct? 7 A. Sure. 8 Q. And the issues with the IAP weren't 9 related to COVID; correct? 10 A. To a certain extent. Captain Koren at 11 the time was on COVID, could not re-sign those. So 12 there was an issue of they couldn't -- one of the 13 quotes was couldn't slide it under his door and get 14 a re-signature. Because we didn't have electronic 15 signature at that time. So there was a certain 16 aspect to that that was relevant. 17 Q. But he was just one of the six 18 signatures on there; correct? 19 A. Correct. But a mandatory signature 20 nonetheless. 21 Q. Okay. And Sergeant Backman only having 22 29 days and not attending SWAT school, that wasn't 23 related to COVID at all, was it? 24 A. Correct. But that was their operating 25 procedure prior to COVID as well.</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

	222
<p>1 Q. Okay. And that has specifically been 2 changed as a result of this incident; correct? 3 A. I believe so, yes. 4 Q. And Lieutenant -- and just to confirm, I 5 understand that Lieutenant O'Daniel was out as a 6 result of COVID. But also -- we've discussed it 7 already, but just to confirm -- she couldn't -- as 8 we sit here today, it would no longer be reading the 9 request on a cell phone; correct? 10 A. I believe so. I can't speak to that a 11 hundred percent. But I do not believe they review 12 on cell phones. 13 Q. But at the time they did, and she was 14 out on COVID? 15 A. Correct. 16 Q. Okay. All right. Let's get into the 17 conclusions. And we will bounce back and forth 18 however you want. I've stated it many times. I'll 19 state it one more. However you want to review the 20 document. I'm not trying to rush you through 21 anything. If you want time to say, Let me loop back 22 to the conclusion, or, I think we need to read this 23 section, then you tell me that. Okay? 24 A. Okay. 25 Q. The "Information Sharing," I think we</p>	224
	<p>1 on this. But there was very, very little use of a 2 dispatcher. 3 Q. Okay. And then in terms of the 3.1 -- 4 and we talked about it quite a bit, and you alluded 5 to it earlier -- that ultimately a DA and a judge 6 signed the search warrant; right? 7 A. Correct. 8 Q. But despite that, in terms of LVMPD's 9 search warrant policy, it still did not meet LVMPD's 10 policy; correct? 11 A. Correct. 12 Q. And based on my understanding, on the 13 next page, 215, the part that you have bolded and 14 italicized is that Detective Grimmett was counseled 15 on this issue; correct? 16 A. Correct. And the -- again, talking 17 about the purview of CIRT and what we do when it 18 comes to use of deadly force, this is the first case 19 and the only case I've dealt with in six years that 20 has gone so far outside of the actual use of deadly 21 force that he was counseled via the -- I believe it 22 was either contact or supervisor intervention. 23 That's more of a labor issue. We don't really deal 24 with that. 25 But he got that negative conclusion.</p>
	223
<p>1 can go through that pretty fast. 2 A. Okay. 3 Q. That just has to do with the P1 case. 4 I actually didn't even really 5 understand. If you want to explain it to me. 6 A. Essentially it's just communication via 7 radio traffic and -- the stuff with P1, as far as 8 the reference, that's just utilization of some of 9 our programs that weren't really relevant, but 10 that's part of the policy that it was in. 11 This was just speaking to just radio 12 traffic communication, information-sharing 13 reference, like post-OIS procedures. 14 Q. That's both 1 and 2; correct? The 15 "MetroComm" is the traffic communication -- 16 A. So 1.1 is more along the lines of 17 radio communication between dispatch, other 18 supervisors. 19 P1 is 1.2, and that deals with the 20 utilization of case notes in the homicide section, 21 which I believe there were none. 22 Q. Sorry. I'm talking about 2.1. 23 A. 2.1, okay. 24 2.1 is, yes, because there's really no 25 dispatcher or call-taker. There was no call-taker</p>	225
	<p>1 And because of the way our board is set up, it's not 2 necessarily tactics. It wasn't -- he wasn't 3 required to be at the board. 4 Q. And would you remember approximately the 5 timeline when you found out that you would also be 6 looking into the -- kind of the underlying homicide 7 investigation issues? 8 A. Almost immediately. I pled my case to 9 stay narrowly focused to the use of force and any 10 discrepancies that we found along the way that was 11 reference to a homicide investigation should have 12 been put to IAB. 13 But, again, I can only go up my chain of 14 command, and my chain of command can only send me 15 back the message that it was given. 16 Q. Okay. And then 3.2, I mean, 17 essentially -- 3.2, if I understand, having read it, 18 is that the underlying homicide investigation, there 19 was no issues with it? 20 A. Correct. 21 Q. And then 3.3 has to do with the IAP; 22 correct? 23 A. Yes. 24 Q. And we've talked about that quite a bit. 25 And we talked about -- according to</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>226</p> <p>1 Conclusion 3.3, the IAP was not within LVMPD's 2 standards; correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And then can you explain to me 5 what the conclusion -- the 3.4 conclusion was?</p> <p>6 A. I believe that was the conclusion, as I 7 read it now, of Sergeant Backman's training, in 8 reference to being new to SWAT. I believe it was 9 within standardized LVMPD tactics, training, and 10 policy based on being in compliance with their 11 section manual.</p> <p>12 Q. And so to be fair, even though he had 13 been on for 29 days, it was in compliance with the 14 way the section manual was written at that point 15 in time?</p> <p>16 A. Correct.</p> <p>17 Q. And when we go down to 3.5, that the 18 policy was -- I mean the recommendation was that the 19 policy be -- sorry -- that the availability of SWAT 20 school be changed so that somebody who is newly -- a 21 sergeant newly on SWAT has the ability to go to SWAT 22 school; correct?</p> <p>23 A. Correct.</p> <p>24 Q. And that was actually -- I mean, that 25 was one of the things that was changed as a result</p>	<p>228</p> <p>1 Okay. So this is the discrepancy 2 that we discussed between the surprise and also 3 giving them reasonable amount of time to answer 4 the door.</p> <p>5 Q. Yeah, that's technically -- that's 6 technically 3.8. 3.6 --</p> <p>7 A. What's the question then again? I'm 8 sorry.</p> <p>9 Q. We discussed what the conclusion was at 10 3.6 and the recommendations, and you said that you 11 wanted to go back. But, yeah, it had to do with the 12 unknowns.</p> <p>13 A. Yeah, I mean, I guess -- obviously it 14 was not within standardized LVMPD training, tactics, 15 and policy, but then the recommendation attached to 16 it is that we recommend that LVMPD recategorize the 17 use of the CET to only be utilized when a "no knock" 18 search warrant is approved by the LVMPD and has 19 judicial preapproval.</p> <p>20 And CIRT recommends the current SWAT 21 training, SWAT Section Manual, and department policy 22 be updated to reflect the standard.</p> <p>23 Q. So then if we go back to the 24 conclusions, we can go -- we just did 3.6. We can 25 go 3.7. The approach to the door is fine, so we can</p>
<p>227</p> <p>1 of this incident; correct?</p> <p>2 A. I believe so, yes.</p> <p>3 Q. And then can you explain to me 3.6?</p> <p>4 A. So that's dealing with the verbiage 5 contained in the SWAT manual, reference the CET for 6 property, when there's a threat to -- a threat of an 7 armed and dangerous suspect was not appropriate in a 8 given time.</p> <p>9 So essentially -- I'll have to go 10 back and read this in a second, but essentially that 11 was what we discussed previously, if I'm not 12 confused, about not having the actual intelligence 13 of children and -- is that a reference to the 14 tactical call?</p> <p>15 Q. 3.6?</p> <p>16 A. No. Sorry. I skipped one.</p> <p>17 Q. No. It's the -- it's conduct a CET for 18 property and the amount of unknowns.</p> <p>19 A. I don't know if I'm missing pages.</p> <p>20 Q. And I think it's page 183, "General - 21 SWAT Planning - Use of Control Entry Tactic."</p> <p>22 A. You said 183?</p> <p>23 Q. Yes.</p> <p>24 A. I don't want to misspeak because I 25 know we went over it.</p>	<p>229</p> <p>1 skip that.</p> <p>2 A. I'm missing -- I'm missing 216. That's 3 why I kept on getting confused. So I was 4 referencing the page number on this.</p> <p>5 Q. I'm sorry.</p> <p>6 A. It's hard to read page numbers 7 sometimes.</p> <p>8 Q. As we know.</p> <p>9 We'll talk about 3.8. That's kind of 10 the big one right there.</p> <p>11 A. Okay. 3.7, approach -- good -- or 12 within standards?</p> <p>13 Q. Correct.</p> <p>14 A. I'm sorry. Are you waiting for me to 15 respond?</p> <p>16 Q. Yes. So explain to me the conclusion 17 of 3.8.</p> <p>18 A. 3.8 was the conclusion with the 19 execution of the warrant. We concluded that it 20 did not constitute a "no knock" warrant under Nevada 21 law because SWAT announced their authority for 22 purposes of making a forced entry. However, SMEs 23 concluded -- sorry, consulted, were not unanimous 24 whether SWAT adhered to the "knock and announce" 25 principles.</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 And this is where we consulted both SMEs 2 from the department and also Anthony Bandiero. 3 Yeah, I'm saying his name right. And that's where 4 he wrote this section on page 187, reference 5 analyzing the SWAT Section Manual reference CETs. 6 Ultimately the conclusion was determined 7 to be a policy and training failure and was not 8 within LVMPD department policy. 9 Q. And so -- and that is a result -- that 10 conclusion is a result of you outlining the facts in 11 the report, what the United -- what the other -- 12 what the cases cited said, and also with -- with 13 consulting with your own -- with the subject matter 14 experts; correct? 15 A. Correct. Like I said before though, 16 there was split. There were some who thought it was 17 okay. However, in the effort of transparency, we 18 put both opinions on there. 19 However, because there's any question of 20 what we said, it was not within policy and training, 21 and it was a policy and training failure. 22 Q. Okay. And ultimately they changed the 23 policy itself; correct? 24 A. Correct. 25 Q. And so that would indicate that after</p>	<p>230</p> <p>1 call and the exterior of the apartment. 2 And, again, taking from both sides of 3 this argument of the SMEs, when the officers lost 4 the element of surprise of a CET, of utilizing speed 5 and surprise to overwhelm the suspect per their 6 manual, by being stuck on the door and hitting the 7 door multiple times by entering the residence is 8 what you had highlighted there, we call this is a 9 policy and training failure, and our conclusion was 10 based on the fact, if there was controversy on that, 11 it should not be a judgment call. There should be 12 things outlined on it, and we need to outline that 13 in the manual of when it was appropriate to do a 14 tactical call. 15 Q. But based on -- sorry. Thank you. 16 And so included in this conclusion 17 though is that waiting six seconds before inserting 18 the stun stick did not provide the occupant an 19 opportunity to peaceably submit to the search, and 20 that's pursuant to United States v. Banks; correct? 21 That was part of the conclusion in 3.8? 22 A. Oh, I was talking about 3.9. 23 Q. I'm sorry. I went back. I looped back 24 to 3.8. My apologies. 25 But that was pursuant to the analysis of</p>
<p>231</p> <p>1 review it was agreed that this is not within the 2 constitutional guidelines of how -- regarding this 3 execution of this warrant; correct? 4 A. I'm not a part of those discussions. 5 After my report is done and my presentation is over, 6 once I give those recommendations, those are just 7 strict recommendations on how we would like it to be 8 handled. I know that it was handled. I don't know 9 the discussions that were made during the 10 search-and-seizure committee or any rewording of the 11 SWAT manual. I'm not privy to that. 12 Q. Okay. But you are aware that it was 13 changed; correct? 14 A. Yes. 15 Q. Okay. And then if we could go to 3.9. 16 A. Okay. 17 Q. Sorry. If you could hand me back 3.8 18 just for a moment. Sorry. 19 A. 3.9 is on there too. 20 Q. Okay. Sorry. I'll pull it up on my 21 computer. Give me just one moment. 22 A. While you're opening that, I'll just 23 kind of go over that. Is that fair? 24 Q. Absolutely. 25 A. So, again, this goes with the tactical</p>	<p>233</p> <p>1 the controlling case law; correct? 2 A. Correct. From -- from Anthony Bandiero. 3 Q. Okay. And I'm sorry, going forward to 4 3.9. 5 A. So, again, do you want me to repeat what 6 I just said? 7 Q. No. It's part of the record. 8 A. Summation, officers were not wrong by 9 not calling a tactical, but we thought there should 10 be some kind of definition form of tactical brought. 11 And I can't tell you off the top of my 12 head if that was specifically changed. I know our 13 recommendation was to specifically change that. I 14 believe it was, but I can't tell you for sure on 15 that one. 16 Q. Okay. And so sorry. I'm just going to 17 loop back up to 3.8 really quickly. 18 We are talking -- you are citing 19 based -- so when you talk about the LVMPD standards 20 and the opportunity to comply before a forced entry 21 is made, you cite SWAT lessons, basic SWAT school, 22 LVMPD policy, search-and-seizure Section 9, 23 no-search search warrants, SWAT Section Manual 9.0. 24 As we go -- as we've kind of looked 25 through all of this, I still haven't been able to</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 locate a part of the -- like, the SWAT manual where 2 it talks about you have to wait this long or this is 3 the reasonable standard. 4 I mean, I just -- 5 A. There isn't. 6 Q. Okay. 7 A. There wasn't. Sorry. 8 Q. Okay. There is now? 9 A. I cannot tell you definitively, but I 10 believe that was part of our -- was to recommend a 11 reasonable time, but I'm not sure if that was placed 12 in there or not. I'm not sure on that. 13 I know CET was changed, but I don't know 14 if there was a reasonable time set because there 15 still has not been a reasonable time set by the 16 courts. 17 Q. Okay. Okay. And then just -- you 18 briefly summarized the 3.9. But basically, hey, 19 being stuck at the door means that you can't 20 surprise and overwhelm; right? 21 A. Correct. But, again, the officers did 22 not do anything outside of their training because 23 they were trained to call a tactical when they 24 believed that there was an issue. Every single 25 tactical operator in this said the same thing.</p>	<p>234 1 that everything they did leading up to it was within 2 standardized training. 3 Q. Leading up to the cover and concealment, 4 once they're inside the unit? 5 A. So -- so I know these are confusing. 6 Contact and cover is kind of a general 7 conclusion as far as I guess you would consider the 8 lead person into the room would be the contact 9 officer. The cover officer would be the secondary 10 person into the room essentially, looking for 11 additional threats. 12 It's trying to stay consistent with 13 reports. That's a general conclusion that's in 14 every one of our reports. Making it fit into a SWAT 15 search warrant isn't exactly -- it doesn't exactly 16 fit. However, for consistency we keep it in there. 17 It's more geared toward patrol. 18 But in this aspect, if you want to, 19 like, break it down completely, Officer Kubla was 20 the contact officer, initially contacts, and then 21 his officers who come in are the cover officers. 22 And that kind of gets confused with 23 3.12, which is cover and concealment, because you 24 see the same word in there. 25 Cover and concealment deals with what</p>
<p>1 Q. Okay. And so then that -- that then 2 goes to 3.10, which I don't think we need to go 3 over. Because there was a tactical called inside 4 the apartment once the other -- 5 A. Correct. Once they saw it. 6 Q. Then 3.11, it's standard LVMPD. 7 And then 3.12, the cover and 8 concealment was -- and that was kind of their 9 post-shooting actions; correct? 10 A. That deals with -- specifically 3.11 or 11 3.12? 12 Q. Both of them actually. 13 A. So, again, moving -- for these to be 14 general conclusions, the contact cover and cover and 15 concealment, those are -- for any OIS we look at all 16 of those. So in order to keep a consistency we 17 include those. 18 Contact cover was really never 19 established here. And that's along the lines of if 20 you're, like, a two-officer unit on patrol, one 21 officer is conducting the interview; the other 22 officer is providing overwatch and looking for 23 threats. 24 So without taking that out, because it's 25 a part of our conclusion, it's more or less saying</p>	<p>235 1 cover and concealment did you have at the time that 2 you used force. At this point, because they're 3 entering a home on a search warrant and a CET, they 4 didn't have any contact or cover, and there was no 5 expected cover and concealment in there. 6 Q. Okay. So then we can go to 4.1 -- 7 sorry. All four used has to do with the threat 8 assessments at the time of -- and their assessment 9 of the backdrop; right? 10 A. Correct. That is all use-of-force 11 related. 12 Q. And by then they've already come in the 13 unit? 14 A. Correct. 15 Q. Then if we can go to Section 5, 16 "Incident Management." 17 A. Okay. Sergeant Werner being the ATL, 18 assistant team leader, was within accordance of the 19 LVMPD SWAT manual in his handling of his duties as 20 the ATL. His plan was the CET. His plan was 21 everything that we went through, but it was approved 22 by his lieutenant. 23 And that was part of that discretion 24 with the use of those noise -- the flash bangs and 25 the stun stick. He asked for them. Her discretion</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

	238	240
<p>1 should have been to say no. And that's just a 2 chain-of-command thing. So his planning was within 3 the standardized training, if that makes sense.</p> <p>4 Q. Yes, it does.</p> <p>5 And then 5.2, that has to do with 6 Sergeant Findley; correct? That's on page --</p> <p>7 A. 5.2. Correct. I believe that -- I 8 believe that goes into the same standard that 9 in general these operators, the ATL and the 10 sergeants, make that plan, and then it is given to 11 the tactical commander. And the tactical commander 12 is overall --</p> <p>13 Q. So where we stop seeing, like, within 14 policy is when we actually get to Lieutenant 15 O'Daniel; correct?</p> <p>16 A. Correct.</p> <p>17 Q. And that's -- sorry -- 5.3, that 18 Sergeant Scott did not -- I mean, that has to do 19 with the assessment of the IAP; correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay.</p> <p>22 A. And then 5.4 is with Sergeant Clarkson. 23 Essentially he did the public safety statement with 24 his camera, which is against policy.</p> <p>25 Q. Correct.</p>	<p>1 the -- the signature page; correct?</p> <p>2 A. Correct. My apologies, I'm losing my 3 voice. Sorry.</p> <p>4 Q. That's okay.</p> <p>5 And reusing the -- although we talked 6 about -- I mean, you said it wasn't one way or the 7 other, but according to 5.7, reusing the signature 8 page was not within standardized LVMPD tactics; 9 correct?</p> <p>10 A. Correct. And that was -- when we had 11 that discussion, that was based off Captain Cole's 12 interview of what he believed was appropriate or 13 not. So that was his belief, but that was not the 14 conclusion.</p> <p>15 Q. Okay. And then 5.8 is kind of like a 16 catchall basically. You tell me if I'm right or 17 wrong. That, like, hey, the other commanders, we 18 don't really have a problem with how they responded 19 to this?</p> <p>20 A. So response to the incident post-OIS.</p> <p>21 Q. Correct.</p> <p>22 A. So setting up command posts and doing 23 all our procedures was within standard.</p> <p>24 Q. Okay. And then 6.1 is the medical 25 response post-OIS; correct?</p>	
<p>1 And then going to 5.5, that has -- we 2 talked about that quite a bit, but that has to do 3 with Lieutenant O'Daniel approving the NFDDs; 4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. And the issue is that she had 7 insufficient information to approve the NFDDs; 8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And LVMPD policy has since been changed 11 as a result of that; correct?</p> <p>12 A. Correct.</p> <p>13 Q. And then going to 5.6 --</p> <p>14 A. I believe so. As far as my knowledge, 15 yes.</p> <p>16 Q. And that's fair. If you want to make 17 that qualification, that's totally fine.</p> <p>18 And then 5.6, that has to do with 19 Captain Cole and also Lieutenant O'Daniel. They 20 ought to have been aware of the issues with the IAP 21 and the search warrant; correct?</p> <p>22 A. Correct. They should have recognized 23 the discrepancies with the page numbers and the 24 discrepancies with the search warrant.</p> <p>25 Q. And 5.7 just has to do with reusing</p>	<p>239</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And then we talked about this. 3 The 7.1 and 7 -- 7.1 had to do about racking Officer 4 Kubla's firearm; correct?</p> <p>5 A. Correct. They cleared his firearm 6 because he was getting medical treatment and was 7 moving all over the place. So in an effort to 8 secure that firearm from going off, Officer Eshe 9 made that weapon safe.</p> <p>10 Q. Okay. And that was found that, based on 11 the totality of circumstances, that was fine; 12 correct?</p> <p>13 A. Yes. Correct.</p> <p>14 Q. And then 7.2, the equipment, firearms, 15 and ammunition were all within LVMPD standardized 16 tactics, training, and policy; correct?</p> <p>17 A. Correct. Everybody used department 18 ammo, and everything was okay with that.</p> <p>19 Q. Okay. No training deficiencies.</p> <p>20 And then going to 9.1, that's the P1 21 thing. We don't really need to talk about that; 22 correct?</p> <p>23 A. Correct. Honestly, I do not know what 24 resulted on that. I know it was a conclusion that 25 was voted on. I can't remember if it was voted to</p>	241

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 approve, modify, or overturn at that point. But 2 yeah, I don't recall what the result of that one 3 was.</p> <p>4 Q. Okay. And then going to 9.2, you 5 recommended basically that the -- that officers have 6 a search warrant refresher; correct?</p> <p>7 A. Correct.</p> <p>8 Q. I think that was -- that was accepted, 9 wasn't it?</p> <p>10 A. I believe so.</p> <p>11 Q. And then the second part is that you're 12 recommending that exculpatory evidence should be 13 included in the search warrant; correct?</p> <p>14 A. Yes.</p> <p>15 Q. And as we sit here today you don't know 16 if that was accepted or not?</p> <p>17 A. I believe it has been. I cannot tell 18 you for certainty. We don't -- I can tell you a lot 19 of the SWAT ones, based on just having conversations 20 with OIO sergeant and previous SWAT cases of 21 noticing its change. But we do not -- once we make 22 those recommendations, as CIRT detectives we don't 23 get privy to what happens afterwards, to include 24 discipline and stuff like that. We intentionally 25 get kept in the dark on that stuff.</p>	<p>242</p> <p>1 issue -- you tell me if I'm right or wrong on this 2 one -- is that Sergeant Backman had only been on for 3 29 days. And based on the recommendation of this, 4 they're saying like, Hey, they shouldn't be doing 5 any live stuff within the first 30 days; is that 6 correct?</p> <p>7 A. Correct. I believe that was the 8 understanding of that.</p> <p>9 Q. Okay. And then the 9.5 has to do -- we 10 talked about it before, but 9.5 has to do with the 11 availability of SWAT school; correct?</p> <p>12 A. Correct, yes.</p> <p>13 Q. And then 9.6 is the one that as we sit 14 here today has been -- to your knowledge, it has 15 been adopted that CET is only to be utilized for a 16 "no knock" search warrant?</p> <p>17 A. Correct.</p> <p>18 Q. And we've gone over the reasons for 19 that. Is there anything else you want to add to 20 that?</p> <p>21 A. No. Just that I haven't seen a CET done 22 since then.</p> <p>23 Q. Okay.</p> <p>24 A. Outside of hostage rescues, which don't 25 count. Those are extenuating circumstances.</p>
<p>1 Q. Okay. And then one of your -- and then 2 the final, the (C), the 9.2(C), is that you just 3 said, Hey, we essentially -- and tell me if I'm 4 right or wrong -- you just said that we think they 5 should look at these two warrants as like a training 6 opportunity; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And that's still part of the homicide 9 investigation, that you were like, I don't even want 10 to look at this?</p> <p>11 A. Not that I didn't want to look at it. I 12 just didn't feel like it met our mission as CIRT.</p> <p>13 Q. Okay. And then 9.3 just has to do 14 with -- you tell me if I'm right or wrong -- it has 15 to do with the recommendation that the new 14-page 16 IAP should be distributed; correct?</p> <p>17 A. Correct. It was only distributed to 18 lieutenants of the ISD section, which is 19 Investigative Services Bureau. And that was the 20 email that Captain Cole referenced when he said it 21 was only sent out to lieutenants.</p> <p>22 We recommended that it be something that 23 is signed off on UMLV, which is our internal 24 training system.</p> <p>25 Q. And then the next one, 9.4. I think the</p>	<p>243</p> <p>1 Q. Of course. Of course. 2 And then 9.7, in regards to "knock and 3 announce," and we talked about this a little bit 4 briefly, this had to do with kind of new training so 5 that the SWAT officers are trained to do "knock and 6 announce" in line with case law and national 7 standards; correct?</p> <p>8 A. Correct.</p> <p>9 Q. And as we sit here today your 10 understanding is this has been implemented; correct?</p> <p>11 A. Yes. And I know that one for a fact 12 because in 2023, in the middle, we got a new 13 lieutenant who organized with the new SWAT tactical 14 commander for us to do a training op with -- or go 15 do essentially like a mini SWAT school with them. 16 They were very vocal with the fact that they are 17 doing "knock and announce," and we actually were in 18 the houses of the SWAT houses when they did their 19 entries, and they were doing them in accordance. 20 They were waiting a very long time before actually 21 entering the house.</p> <p>22 Q. And then -- so 9.7 has two -- it has (A) 23 and (B).</p> <p>24 And so (B) -- can you explain to me what 25 the (B) section is?</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">246</p> <p>1 A. I believe that is reverting the section 2 manual to what it was prior to them changing it to 3 the -- they changed it from the "never." They took 4 that word out and made it -- changed the CET to 5 where they could do that if there was extenuating 6 circumstances with the -- what do you call it? -- 7 threats inside the building. Those checkmarks 8 inside the manual.</p> <p>9 And from my recollection, I 10 believe all of that was incorporated almost 11 simultaneous with the 9.6 as like a full overhaul in 12 the manual.</p> <p>13 Q. And then -- okay. And then 9.8 -- and 14 this has to -- we talked about this a little bit 15 earlier. And your understanding as we sit here 16 today and what you testified to before is they've 17 kind of done some expanded training on how to call a 18 tactical; correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. And that's 9.8.</p> <p>21 And then 9.9, you talk about it more in 22 the body of the report. It's not necessarily 23 captured in here. It seems to me there's two 24 different issues; one, how the search order is 25 actually sent over to SWAT, and then how it's</p>	<p style="text-align: right;">248</p> <p>1 Specifically for the officers, there's a 2 peer officer who votes -- that's an officer of the 3 same rank -- there is a tactics expert, and then 4 there is a -- I believe it's the deputy chief that 5 votes. Those are the three voting individuals from 6 our department, and then four civilians. That's 7 specifically only on the deadly force.</p> <p>8 When it comes to the tactical review 9 board, all the same people are in there. You still 10 have your peer officer, your peer sergeant in this 11 case. Because Lieutenant O'Daniel was -- had 12 conclusions, there was a peer lieutenant. And I 13 believe there was also a peer captain. It was a 14 packed room that day. Usually it's not that bad. 15 But because Captain Cole got conclusions, there was 16 a peer captain that was responding on this one, on 17 this tactical review board.</p> <p>18 Q. And so I actually have the Tactical 19 Review Board CIRT Conclusions for Lieutenant 20 O'Daniel.</p> <p>21 A. Okay.</p> <p>22 MS. MURPHY: And so I am going to hand 23 these over to you. We're going to mark these as 24 Exhibit 6.</p> <p>25 (Exhibit 6 marked.)</p>
<p style="text-align: right;">247</p> <p>1 approved. Is that accurate?</p> <p>2 A. Yes.</p> <p>3 Q. And the changes that CIRT recommended in 4 terms of, Hey, it should go to the lieutenant first 5 so that they know what's being -- and then it should 6 go bottom down instead of top up, that's been 7 implemented; correct?</p> <p>8 A. I believe so.</p> <p>9 Q. All right. Let's look at the -- and 10 so I've got some tactical review board conclusions. 11 And so kind of what -- we -- we -- we 12 talked about what happens up through creating the 13 report. And so once the report is created, then it 14 goes to the tactical review board?</p> <p>15 A. Correct.</p> <p>16 Q. Correct?</p> <p>17 And that has -- that has the SMEs and 18 civilians?</p> <p>19 A. No.</p> <p>20 Q. No. Okay. Who does it have on it?</p> <p>21 A. So first there's the use-of-force board. 22 It's essentially the same personnel. The 23 use-of-force board has four civilian members and 24 three individuals from our department who vote on 25 that use of force.</p>	<p style="text-align: right;">249</p> <p>1 BY MS. MURPHY:</p> <p>2 Q. Before you preface anything, I'm going 3 to ask the question, and you can tell me if you 4 want.</p> <p>5 Have you ever seen this document before?</p> <p>6 A. No.</p> <p>7 Q. Okay. So this is -- were you present, 8 though, for, like, whatever the tactical review 9 board meeting was? Because you kind of talked about 10 how many people were there.</p> <p>11 A. Correct. So I am present for that. I 12 have no say in that. I gave my presentation. After 13 my presentation, every member of the board -- these 14 are the peer officers, sergeant, lieutenant, 15 captain -- get to -- and training experts, deputy 16 chief, assistant sheriff -- everybody who's on the 17 board has a chance to ask me specific questions 18 about this case.</p> <p>19 Q. It's -- sorry.</p> <p>20 A. Go ahead.</p> <p>21 Q. No. Go ahead.</p> <p>22 A. Once that portion is done, then I am 23 done for the remainder of my involvement in this 24 case.</p> <p>25 Q. Do you actually leave the room, or --</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 A. No. I am there present. I'm not there 2 for deliberations on when these conclusions are 3 made. I exit the room for that.</p> <p>4 Q. Okay.</p> <p>5 A. So I don't have any weight on what was 6 said or why things were overturned or approved or 7 modified.</p> <p>8 When they finish all their questioning 9 of all the officers, of the people that were 10 involved, everybody exits except for the board 11 members, and they go over this.</p> <p>12 And then I come back in and I learn 13 the same way everybody else does what the results 14 were.</p> <p>15 Q. Okay. And so is it, like, a closed 16 hearing? Is it an open hearing?</p> <p>17 A. Closed hearing.</p> <p>18 Q. And sorry -- sorry. You listed off the 19 people that can attend. They're all 20 people related -- sorry.</p> <p>21 You listed off the people that can 22 attend. So, like, a member of the public can't 23 come?</p> <p>24 A. No.</p> <p>25 Q. Okay. But you said that this one was</p>	<p>250</p> <p>1 about the deliberations. So it seems like, in terms 2 of the one for Lieutenant O'Daniel, you flipped -- 3 there's different signature pages. So it's like the 4 three provisions that applied to her.</p> <p>5 And are you given this at the end? Do 6 you see this at all?</p> <p>7 A. No.</p> <p>8 Q. Okay. And so when you come back into 9 the meeting and you hear what happened, what do 10 you hear?</p> <p>11 A. So they'll go -- they'll start the tapes 12 again, and they'll say, We had X amount of 13 conclusions for Officer Roth. There were three 14 general conclusions. All were validated. They -- 15 you had four specific conclusions. Three were 16 validated; one was overturned.</p> <p>17 And then they would say, The one that 18 was overturned is blah, blah, blah. Would you like 19 an explanation of why?</p> <p>20 Q. Did you ask, when you heard that any of 21 them were overturned -- I mean, we just went through 22 Lieutenant O'Daniel's, but there's also, like --</p> <p>23 A. I don't get the opportunity to speak. I 24 am done. The second that they are done asking me 25 questions in the room, I sit off to the side, and my</p>
<p>1 much more packed than usual; correct?</p> <p>2 A. Because normally we don't have 3 conclusions for every ranking member of this 4 department outside of appointed members.</p> <p>5 Q. And so looking at the Tactical Review 6 Board CIRT Conclusions, if we were to turn to -- and 7 we'll just -- I think we'll reference what's called 8 the Bates number.</p> <p>9 See the alphanumeric number down here at 10 the bottom?</p> <p>11 A. Okay.</p> <p>12 Q. So turning to page 4574, it just has 13 checked "Overturn."</p> <p>14 A. Okay.</p> <p>15 Q. But you weren't privy to the discussions 16 about what that means, how they're going to 17 implement it; nothing?</p> <p>18 A. Correct. For the entirety of this -- 19 this is all done with voting sheets, and then these 20 are for the -- I believe it's for the sheriff. This 21 is outside of the purview of a CIRT detective. We 22 do not see these, handle these whatsoever.</p> <p>23 Q. Okay. And so in looking through -- even 24 though you seem to have some level of familiarity 25 with the document, although I know you can't tell me</p>	<p>251</p> <p>1 involvement, outside of stopping and starting my 2 tape recorder, from deliberations to starting the -- 3 resuming the tactical review board, is completed.</p> <p>4 Q. Okay.</p> <p>5 A. And I believe these are more for the 6 board member of -- so, again, I see then Deputy 7 Chief Prosser's signature on some of these. I saw 8 then Assistant Sheriff Walsh's, now undersheriff 9 Walsh's, signature under them. These are given to 10 them to affirm because they are the chair and 11 co-chair.</p> <p>12 Q. Okay.</p> <p>13 A. So, again, I have zero recollection -- 14 not recollection. I have zero involvement with this 15 document.</p> <p>16 Q. And then -- so I will then -- thank you 17 for clarifying that.</p> <p>18 I'll have you look at this one too. So 19 this -- this is starting at LVMPD 4826. This is 20 LVMPD Interoffice Memorandum. It kind of gives a 21 summary of the findings. But there seems -- sorry, 22 I'll give this to you and I'll ask.</p> <p>23 MS. MURPHY: Can you mark this as 24 Exhibit 7, please.</p> <p>25 (Exhibit 7 marked.)</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">254</p> <p>1 THE WITNESS: Again, this is stuff that 2 is out of my purview. I don't ever see this. I've 3 never seen any one of these after my cases. These 4 are specifically for what these look like. So these 5 being struck out are the ones that are probably 6 overturned or modified.</p> <p>7 BY MS. MURPHY:</p> <p>8 Q. But you're guessing on that? You're 9 not --</p> <p>10 A. I'm guessing on that.</p> <p>11 Q. Okay.</p> <p>12 A. Like, we don't have any control over 13 this. By this point, when this comes out and when 14 this is completed, I'm already on my next case, 15 grinding out interviews and doing my next 16 investigation. We never see this, or we never have 17 access to this. This is not put into our case file. 18 This is not in IA Pro, to my knowledge.</p> <p>19 MS. MURPHY: Okay. Let me -- keep that 20 in that stack. Give me just a couple minutes to 21 review my notes.</p> <p>22 THE VIDEOGRAPHER: Off the record at 23 2:54 p.m.</p> <p>24 (A break was taken.)</p> <p>25 THE VIDEOGRAPHER: On the record at</p>	<p style="text-align: right;">255</p> <p>1 conducting CETs like we do today, there possibly 2 could have been a difference in the outcome -- of 3 the outcome. But that doesn't say that there might 4 be. Mr. Williams could have responded in the same 5 way. There's really no way to tell.</p> <p>6 I know there were some deficiencies 7 within our department policy and procedures and how 8 SWAT operated in 2022, specifically that day and 9 prior to. But as far as specifically speaking on 10 the constitutional knowledge, I don't have the 11 in-depth that you have. And I hope that answers the 12 question.</p> <p>13 BY MS. MURPHY:</p> <p>14 Q. Don't you think as a officer you 15 actually should have a pretty strong working 16 knowledge of search-and-seizure requirements as it 17 relates to a citizen's rights?</p> <p>18 MR. ANDERSON: Objection. Form.</p> <p>19 THE WITNESS: And, again, I will go back 20 to my knowledge of what my policy and my training 21 goes. Yes, there are aspects of that that have 22 legal ramifications for that, which are outlined in 23 policy, and we do go through classes for search and 24 seizure. And yes, there is an obligation to have 25 that knowledge.</p>
<p style="text-align: right;">256</p> <p>1 2:56 p.m.</p> <p>2 BY MS. MURPHY:</p> <p>3 Q. In performing your job -- Justin, in 4 performing your job duties as a police officer, 5 do you agree with me that you have a duty to 6 conduct yourself such that you do not violate the 7 civil or constitutional rights of any members of the 8 public?</p> <p>9 A. Yes.</p> <p>10 Q. Do you also agree that if you see other 11 officers violating these civil or constitutional 12 rights of a member of the public you have a duty to 13 intervene and stop that officer?</p> <p>14 A. Yes.</p> <p>15 Q. After having conducted the detailed 16 investigation you did in this matter, do you believe 17 that Mr. Williams' civil or constitutional rights 18 were violated?</p> <p>19 MR. ANDERSON: Objection. Form.</p> <p>20 Go ahead and answer.</p> <p>21 THE WITNESS: I am not a constitutional 22 expert. While we deal with aspects of the 23 Constitution, honestly, I don't know if I can speak 24 to that.</p> <p>25 I know that we probably -- if we were</p>	<p style="text-align: right;">257</p> <p>1 In that same respect, I don't have the 2 same knowledge that you have, as you don't have the 3 same knowledge that I have as far as police 4 procedures. You have an idea having gone through 5 probably multiples of these, but I don't have the 6 vast knowledge of, say, a lawyer would have.</p> <p>7 BY MS. MURPHY:</p> <p>8 Q. I'm not asking you to have a JD. I'm 9 asking you, in your experience as a police officer, 10 do you believe that Mr. Williams' constitutional 11 rights were violated, or do you believe they were 12 not violated?</p> <p>13 MR. ANDERSON: Objection. Form.</p> <p>14 Go ahead.</p> <p>15 THE WITNESS: I don't know how to answer 16 that. I honestly don't know how to answer that. I 17 can't tell you one way or the other.</p> <p>18 What I can tell you is my report was 19 drafted, and my conclusions met the investigation of 20 my department policies and procedures. I do not 21 know if I can say with an absolute fact that -- one 22 way or the other.</p> <p>23 BY MS. MURPHY:</p> <p>24 Q. In Section 3.8 it's written, "CIRT found 25 that under the conditions present here,</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">258</p> <p>1 six seconds" -- sorry. Strike that. I'll start 2 over again. 3 "CIRT found that under the conditions 4 present here, six seconds was insufficient to allow 5 occupants time to answer the door, let alone submit 6 to a search."</p> <p>7 As we've discussed here today, the 8 ability to answer the door and submit to a search is 9 a constitutional right; correct?</p> <p>10 MR. ANDERSON: Objection. Form. 11 THE WITNESS: Can you rephrase the 12 question, please? Or, sorry, repeat the question? 13 BY MS. MURPHY:</p> <p>14 Q. Sure. 15 "CIRT found that under the conditions 16 present here, six seconds was insufficient to allow 17 occupants time to answer the door, let alone submit 18 to the search."</p> <p>19 The right to answer the door and submit 20 to a search is a constitutional right; correct?</p> <p>21 MR. ANDERSON: Objection. Form. 22 THE WITNESS: Yes. 23 BY MS. MURPHY: 24 Q. Okay. So if Mr. Williams was not given 25 sufficient time to answer the door or submit to a</p>	<p style="text-align: right;">260</p> <p>1 CERTIFICATE OF REPORTER 2 STATE OF NEVADA) 3)SS 4 COUNTY OF CLARK) 5 I, Holly Larsen, a duly certified court reporter licensed in and for the State of Nevada, do hereby certify: 6 That I reported the taking of the deposition of the witness, Detective Justin Roth, at the time and place aforesaid; 7 That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth; 8 That I thereafter transcribed my shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate record of testimony provided by the witness at said time to the best of my ability. 9 I further certify (1) that I am not a relative or employee of counsel of any of the parties; nor a relative or employee of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned; and (2) that transcript review pursuant to FRCP 30(e) was requested. 10 IN WITNESS HEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 20th day of January, 2025. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;"><i>Holly Larsen</i> HOLLY LARSEN, CCR NO. 680</p>
<p style="text-align: right;">259</p> <p>1 search, then his constitutional rights were 2 violated; correct? 3 MR. ANDERSON: Objection. Form. 4 THE WITNESS: Based on your explanation 5 of how that reads in that report, then yes. 6 MS. MURPHY: Okay. I don't have any 7 other questions. 8 MR. ANDERSON: No questions. 9 THE VIDEOGRAPHER: Counsel, will anyone 10 need the video? 11 MS. MURPHY: I won't need the video. 12 MR. ANDERSON: No thank you at this 13 time. 14 THE VIDEOGRAPHER: This concludes the 15 deposition of Detective Justin Roth, consisting of 16 two discs. The time is 3:01 p.m., and we are off 17 the record. 18 THE COURT REPORTER: Would you like the 19 transcript? 20 MR. ANDERSON: Yes. We'll do a 21 read-and-sign. 22 (Proceedings concluded at 3:01 p.m.) 23 24 25</p>	<p style="text-align: right;">261</p> <p>1 ERRATA SHEET 2 3 I declare under penalty of perjury that I have read 4 the foregoing ____ pages of my testimony, taken on 5 _____ (date) at _____ (city), 6 _____ (state), and that the same is a true 7 record of the testimony given by me at the time and 8 place herein above set forth, with the following 9 exceptions: 10 11 Page Line Should read: Reason for change: 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____</p>

Detective Justin Roth

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

262

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